

CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL

COUNCIL BILL NO.

ENACTMENT NO.

SPONSORED BY:

ORDINANCE

A FRANCHISE ORDINANCE GRANTING CITYLINK FIBER HOLDINGS OF ALBUQUERQUE, LLC. A MUNICIPAL AUTHORITY TO RENT, USE AND OCCUPY RIGHTS-OF-WAY AND OTHER PUBLIC PLACES IN THE CITY OF ALBUQUERQUE, NEW MEXICO, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. SHORT TITLE.

This franchise Ordinance may be cited as the CityLink Fiber Holdings of Albuquerque, LLC. (“CLFHA”) Municipal Authority.

Section 2. PERMISSION TO RENT AND USE.

There is hereby granted by the City to CLFHA permission to rent, use and occupy and the right, privilege and authority to construct, purchase, acquire, locate, maintain and extend into, within, and through the City, a Network for Telecommunications as that term is defined in the Telecommunications Ordinance, with the right and privilege for the period and upon the terms and conditions hereinafter specified and upon the terms and conditions of the Telecommunications Ordinance, to sell, furnish and distribute telecommunications in the City, by means of its Network, on, over, under, along and across all Rights-of-Way in the City, now or hereafter included in the boundaries of the City as such boundaries now exist or may hereafter be extended. This permission is not

exclusive and cannot prevent the City from issuing other franchises or authorizations or prevent the City from itself constructing, operating, or repaving its own system, with or without a franchise.

Section 3. TERM; EFFECTIVE DATE.

(A) Term. This Municipal Authority, and the rights, privileges and authority granted hereunder, shall continue for a period of ten (10) years from the effective date hereof.

(B) Effective Date. This Ordinance shall become effective from and after its passage and publication as provided by § 3-42-1 NMSA 1978, or successor statute; provided that CLFHA, within thirty (30) days of the date of adoption of this franchise Ordinance shall have filed with the City Clerk of the City an unconditional acceptance of this Ordinance. Within ten (10) days after the filing of the acceptance, the City Clerk shall acknowledge in writing the receipt of the Company's acceptance. All costs of any publication required by law shall be at the expense of CLFHA in addition to other charges provided for herein.

Section 4. COMPENSATION AND CHARGES.

(A) MUNICIPAL AUTHORITY FEE. As consideration for this Municipal Authority, which provides for the rental and use by CLFHA, of the Rights-of-Way within the boundaries of the City, CLFHA shall pay to the City a fee in the amount of three percent (3%) of the annual Gross Revenue of Telecommunications Services. Payment shall be made according to the requirements of the Telecommunications Ordinance.

(B) NON-MONETARY CONSIDERATION. As one-half of one percent (0.5%) of the three percent of annual Gross Revenue consideration for this Municipal Authority, CLFHA shall provide to the City of Albuquerque, for its exclusive non-commercial and internal use certain elements of its Network as follows:

(1) 12 strands of Dark Fiber within its Backbone network. Dark Fiber shall mean an un-energized fiber optic strand. The City is responsible, at its sole cost, for all equipment, software and related items to energize or light the Dark Fiber.

(2) 4 strands of Dark Fiber to each public kindergarten through twelfth grade schools locations, as and when CLFHA deploys its Network and can reasonably and economically connect to such schools, in CLFHA'S sole and reasonable discretion.

(3) Connection to Public Structures. At the time of construction of its network CLFHA shall provide, at no cost to the City, connections to Public Structures as defined in the Telecommunications Ordinance. The City Communications Manager will approve and request the connection to the Public Structure, but shall not unreasonably delay CLFHA'S Network construction timeline.

(4) Additional Conduit at time of Construction. CLFHA will provide conduit to the City, at the City's sole expense, during any construction project. CLFHA will provide a written estimate of the incremental cost of adding the City conduit to its construction plan. The City Communications Manager will approve and request the additional conduit prior to construction, but will not unreasonably delay such construction by CLFHA.

(5) Higher Educational Sites. CLFHA will provide 4 strands of lateral dark fiber to be connected to the City's 12 strands of backbone dark fiber, in a manner prescribed by the City, to twenty (20) Higher Education sites at zero-cost. The designation and approval of a site is at the discretion of the City's Communications Manager. A designated site cannot be moved to a different physical location, once connected.

(C) CONNECTIONS, MEASUREMENT AND PROCEDURE.

For all connections to public kindergarten through twelfth grade schools, Public Structures and Higher Education Sites, as described below, such connections will be provided, at zero-cost, to the City as long as they are within 200 linear feet of the nearest CLFHA Network backbone. Such measurement will be from the nearest facing wall of the building or structure to be connected and the nearest CLFHA Network backbone. CLFHA will not be required to cross any adjacent street, road, alley, or sidewalk. Should a public kindergarten through twelfth grade school, Public Structure, or Higher Education site wish to be connected that is a greater distance than the above 200 foot distance, the entity responsible for such site will pay to CLFHA the actual costs for the portion that is greater than 200 feet in distance. CLFHA will provide a written estimate of the additional actual costs, in advance, and the entity desiring the connection will provide written authorization to proceed and commitment to pay, if it desires such connection. In no event shall CLFHA connect a building by way of another building lateral. All connections under this section are to be made at the time CLFHA is constructing the Network backbone within the area of the requested site. Should a public kindergarten through twelfth grade school, Public Structure or Higher Education Site wish to be connected after CLFHA has completed its construction in the area

of the site, then the entity desiring the connection for that site shall pay to CLFHA its reasonable direct costs to connect the site.

Section 5. ORDINARY COURSE OF BUSINESS.

CLFHA is in the business of providing a non-discriminatory Open Access Telecommunications Systems. In the normal and ordinary course of business CLFHA may sell or lease elements of its Telecommunications Network. As an example of such activity, CLFHA may sell or lease certain dark fiber strands within its fiber optic cable that is part of the CLFHA Telecommunications Network. Such activities, within the normal and ordinary course of business shall not require compliance with §13-4-10-5 ROA 1994.

Section 6. NOTICE.

For the purpose of this Ordinance, notice to the City will be to:

Mayor
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

With a copy to:

City Attorney, Utility Counsel
City of Albuquerque
P.O. Box 2248
Albuquerque, New Mexico 87103

Notice to CLFHA will be to:

CityLink Fiber Holdings of Albuquerque, LLC
Attn: Legal Department
505 Marquette Ave NW, Suite LL-110A
Albuquerque, NM 87102

With a copy to:

LLC
Ross Perkal, Counsel for CityLink Fiber Holdings of Albuquerque,
708 Marquette Ave NW

Albuquerque, NM 87102

Notice will be effective upon delivery at the above addresses until the City or CLFHA notifies the other in writing, of a change in address. All notices shall be delivered personally or sent by certified mail, return receipt requested to the parties at their respective addresses set forth above.

Section 7. SEVERABILITY CLAUSE.

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 8. PUBLIC MEETING.

It is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of time, place, and purpose of said meeting was given as required.

Section 9. COMPILATION.

This Ordinance shall be incorporated in and complied as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.