

ORDINANCE 819-2016

AN ORDINANCE OF THE CITY OF DRY RIDGE, KENTUCKY, GRANTING CINCINNATI BELL TELEPHONE COMPANY, LLC, A NON-EXCLUSIVE FRANCHISE TO OPERATE TELEPHONE SYSTEMS WITHIN THE CONFINES OF THE CITY OF DRY RIDGE, FOR A TERM OF TEN (10) YEARS, SUBJECT TO THE PROVISIONS WITHIN.

WHEREAS, on March 1, 2016, Dry Ridge offered at bid a non-exclusive telephone system franchise pursuant to ; and


NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY OF DRY RIDGE, KENTUCKY, AS FOLLOWS:

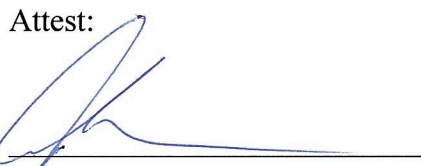
1. The Bid Proposal, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.
2. Dry Ridge has granted unto CBET a non-exclusive franchise to operate telephone systems within the confines of the City Dry Ridge, for a term of ten (10) years, subject to the provisions of the Bid Proposal.
3. The franchise memorialized in this Franchise Agreement shall commence July 1, 2016, and shall expire as provided in the terms and provisions of the Bid Proposal.
4. CBET does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Franchise Agreement, and further to faithfully perform all acts required of it pursuant to said franchise.
5. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Bid Proposal and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

First Reading: June 20th , 2016

Second Reading: July 11th, 2016

Passed, adopted, ordained, approved and ordered published this the 11 day of July, 2016.


James Wells, Mayor

Attest:

Amy Kenner, City Clerk

BID PROPOSAL:
OPERATION-OF TELEPHONE SYSTEMS IN THE
CITY OF DRY RIDGE, KENTUCKY
BY
CINCINNATI BELL TELEPHONE COMPANY, LLC

WHEREAS, the **CITY OF DRY RIDGE, KENTUCKY** (the "City") has requested bid proposals from parties interested in obtaining a franchise to operate telephone systems within the confines of the City;

NOW, THEREFORE, **CINCINNATI BELL TELEPHONE COMPANY, LLC** ("**CBT**" or "**Franchisee**"), 221 East Fourth Street, Cincinnati, Ohio 45201, hereby submits its bid for obtaining a franchise, privilege and right of way in the streets, alleys and public grounds of the City of Dry Ridge for the purpose of operating telephone systems as follows:

SECTION 1. DEFINITIONS

As used herein, the following words and phrases have the meanings indicated:

A. The words "public property" mean any real estate in the City of Dry Ridge dedicated or otherwise open to public use, including, without limitation, all streets, roads, highways, sidewalks and other public easements and rights of way.

B. The word "franchise" means the privilege and right of way in the streets, alleys and public grounds of the City of Dry Ridge for the use thereof for the purpose described in Addendum A attached hereto and incorporated herein by reference.

C. The word "facilities" means any tangible apparatus, equipment, fixture, or instrumentality in any way involved in the purpose of the franchise proposed hereby, including without limitation, those described in Addendum A attached hereto and incorporated herein by reference.

D. The words "franchise service or commodity" mean any service or commodity the transmission, distribution or sale of which is promoted by the franchise proposed hereby.

E. "Franchise Fee" means for the purposes of this Agreement any fee that may be imposed by the City on Franchisee as compensation for Franchisee's use of public rights-of-way and roads or that is defined by Federal law as a franchise fee under or by Kentucky law under KRS 136.660. Use of this definition in this Agreement is without prejudice to any rights Franchisee or City may have under Federal and Kentucky law as they may be amended.

F. "Gross Revenues" means any and all revenues or receipts, including cash, credits, property or other consideration of any kind or nature, which is derived directly or

indirectly and collected by Franchisee for telephone and/or telecommunications services from its Subscribers having service addresses within the Franchise Area. Gross Revenues includes, recurring monthly charges for telephone and/or telecommunications services and telephone and/or telecommunications services related equipment; service charges related to the provision of telephone and/or telecommunications services, including, but not limited to, service order, installation, connection and service termination charges. Gross Revenue shall include any such revenue or receipts received by any Affiliate of the Franchisee where such revenue or receipts in the ordinary course of business should have, according to existing practices, been paid to Franchisee in connection with the operation of its telephone and/or telecommunications services operations. Gross Revenue shall not include the following: a) Any taxes, fees, or assessments that are collected by the Franchisee from telephone and/or telecommunication subscribers for pass-through to any federal, state, or local government agency, including the franchise fee authorized under Section 12; (b) Uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected; (c) Late payment charges; (d) Maintenance charges; and (e) Charges for services other than telephone and/or telecommunications services, reasonably identifiable on books or records the Franchisee keeps in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to telephone and/or telecommunications services subscribers, including, but not limited to the provision of directory or internet advertising, including yellow pages, white pages, banner advertising, and electronic publishing. Gross revenue shall be computed in accordance with generally accepted accounting principles.

SECTION 2. FRANCHISE NON-EXCLUSIVE

The franchise proposed hereby shall be non-exclusive; and the City of Dry Ridge shall not be restricted or precluded thereby from granting additional, like or similar franchises to persons other than the Franchisee, in all or any part of the City of Dry Ridge.

SECTION 3. FRANCHISE TERM

The term of the franchise proposed hereby shall be for a period of ten (10) years, beginning at midnight on the last day of the calendar month in which this proposal is accepted by the City of Dry Ridge.

SECTION 4. FRANCHISE AREA

The franchise proposed hereby shall be for the entire area of the City of Dry Ridge, Grant County, Kentucky, its successors and assigns, as it now exists or is changed

through annexation, reduction or expansion of its boundaries, merger, consolidation, or other similar proceeding.

SECTION 5. DRY RIDGE AVAILABILITY OF FRANCHISE SERVICE OR COMMODITY

During the term of the franchise proposed hereby, the Franchisee shall cause the franchise service or commodity to be made available to the citizens, occupants, residents and inhabitants of the of the City of Dry Ridge, upon the same terms and conditions that the franchise service or commodity is made available by the Franchisee to other persons in similar circumstances. The Franchisee will adhere to Federal, State and Local statutes with regard to availability and provisioning of the franchise service and commodity.

SECTION 6. CONTINUATION OF EXISTING FACILITIES

During the term of the franchise proposed hereby, any existing facilities of the Franchisee within or upon any public property of the City of Dry Ridge, may be continued to be operated, used, maintained and repaired by the Franchisee to the existing condition thereof, as long as the records of the Franchisee in regard thereto are reasonably available to the City of Dry Ridge upon any need therefore.

SECTION 7. NEW FACILITIES

During the term of the franchise proposed hereby, the Franchisee may replace, reconstruct, or extend any existing facilities of the Franchisee within or upon any public property of the City of Dry Ridge, or construct or install new facilities thereon in accordance with the City of Dry Ridge ordinances.

SECTION 8. MAINTENANCE OF FACILITIES

During the term of the franchise proposed hereby, the Franchisee shall cause the facilities thereof within or upon the public property of the City of Dry Ridge to be maintained and repaired to a condition which is functional and safe.

SECTION 9. RESTORATION

During the term of the franchise proposed hereby, the Franchisee shall cause the condition of any of the public property of the City of Dry Ridge upon which any facilities of the Franchisee have been installed or constructed to be restored to a condition which is as good or better than the condition thereof immediately preceding the construction or installation of the facilities of the Franchisee thereon.

SECTION 10. CLAIM DEFENSE AND INDEMNIFICATION

The Franchise shall, at the sole cost and expense thereof, defend the City of Dry Ridge against any and all claims and cause of action against the City of Dry Ridge as a consequence of any act or omission of the Franchisee, pursuant to the franchise proposed hereby, to which there was no contribution or involvement by the City of Dry Ridge other than the franchise proposed hereby; and the Franchisee shall pay and indemnify and hold the City of Dry Ridge harmless from any and all claims, damages, judgements, causes of action, court costs and expenses in regard thereto, including without limitation, reasonable fees of attorneys and expert witnesses therefor.

SECTION 11. OTHER MUNICIPAL AUTHORITY

The franchise proposed hereby shall not, in any way, restrict or preclude any authority of the City of Dry Ridge to which the Franchisee may otherwise be subject, according to law.

SECTION 12. PAYMENT TO THE GOVERNMENT.

- A. Payments shall be made at the times and in conformance with the requirements of applicable law, currently Kentucky Revised Statutes, Chapter 136, as revised by House Bill 272 (Tax Modernization) in the 2005 Regular Session of the Kentucky General Assembly (the "Kentucky Franchise Law"). Additionally, the City may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees but excluding and never including Franchise Fees except to the extent allowed by subsection (C), below.
- B. The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Agreement, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Such payments shall be made at the times and in conformance with the requirements of this Agreement.
- C. The City may not collect Franchise Fees from Franchisee except to the extent allowed by this subsection (C). If at any time Kentucky law is changed to allow the collection of Franchise Fees by Franchisee, (i) Franchisee shall pay Franchise Fees for the reason that the Roads to be used by Franchisee in the operation of its system within the boundaries of the City of Dry Ridge are valuable public properties, acquired and maintained by the City at great expense to its taxpayers, and that the grant to Franchisee to use said Roads is a valuable property right without which Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, (ii) the Franchise Fee shall be in an amount equal five percent (5%) of Franchisee's Gross Revenue and (iii) notwithstanding the foregoing, in no event shall Franchisee pay more than any

competing telephone and/or telecommunications provider, to the extent such provider uses the City's rights of way and as permitted by law.

- D. Nothing herein shall be deemed a waiver of any right of Franchisee to challenge the imposition of any fee as inconsistent with applicable law.
- E. Subject to the Kentucky Franchise Law, the payment of the Franchise Fee shall be in addition to any other tax or payment owed to the City by Franchisee.
- F. If any Franchise Fee is owed to the City under subsection (C), above, it shall be payable quarterly to the City and Franchisee shall file a complete and accurate report, signed by and certified as accurate by an officer of Franchisee, of all Gross Revenues received within the territorial limits of the City of Dry Ridge during the previous three month period, and said payment shall be made to the City no later than forty-five (45) days after the expiration of the quarter when due. The Gross Revenue report from operations of Franchisee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of service by month; and a schedule of Gross Revenue upon which the Franchise Fee is based.
- G. If any Franchise Fee is owed to the City under subsection (c), above, upon reasonable notice, the City shall have the right during normal business hours to inspect Franchisee's relevant revenue records at Franchisee's office, the right to audit and to re-compute any amounts determined to be payable under this Agreement; provided, however, that such audit shall take place within twelve (12) months following the close of each of Franchisee's fiscal years. If, as a result of such audit or review, the City determines that Franchisee has underpaid its fees to the City in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional amount due to the City as a result of an audit or review shall be paid within the thirty (30) days following written notice to Franchisee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement.
- H. In the event that any franchise payment or recomputed amount is not made to the City on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- I. The City reserves the right to require Franchisee, to collect any consumer or other tax or other fee that may be lawfully imposed by the City, the Commonwealth of Kentucky, or the federal government on telephone and/or telecommunications services .

- J. No acceptance of any payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the City may have for further or additional sums payable under this Agreement.

SUBMITTED BY:

CINCINNATI BELL TELEPHONE COMPANY, LLC

BY: *Ted Heckmann*
TED HECKMANN
CINCINNATI BELL TELEPHONE COMPANY, LLC
221 E. FOURTH STREET
CINCINNATI, OH 45202

March 1, 2016

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ADDENDUM A

The purpose of the franchise to which this Addendum A is attached shall be for construction, maintenance, repair, reconstruction, operation and use of the equipment, apparatus, facilities, and appurtenances thereto for the telephone and general communications system by means of telephone wires, radio signals and otherwise to engage in the business of providing general communications services for use by others.


CINCINNATI BELL TELEPHONE COMPANY, LLC

ADDENDUM B

The facilities of the Franchisee shall include, without limitation, poles, crossarms, wires, cables, anchors, conduits, manholes, junction boxes and other apparatus, fixtures, and equipment, both above ground and below ground for the transmission of communications by wire, radio or otherwise.



CINCINNATI BELL TELEPHONE COMPANY, LLC