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CITY OF CHANDLER
CITY CLERK



MEMORANDUM TRANSPORTATION AND DEVELOPMENT DEPARTMENT
MEMO NO. TDA11-066

DATE: January 27, 2011

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, ACTING CITY MANAGER *RD*
 PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*
 R.J. ZEDER, TRANSPORTATION AND DEVELOPMENT DIRECTOR *RJZ*

FROM: MARGARET COULTER, REGULATORY AFFAIRS MANAGER *MC*

SUBJECT: Ordinance No. 4276 approving Amendment Two to the Cable Television Services Requirements and accepting I-Net Services Concessions in lieu of Liquidated Damage Fees related to Ordinance Number 2890-Cable Television License Agreement between the City of Chandler and Qwest Broadband Services, Inc.

RECOMMENDATION: Staff recommends approval of Ordinance No. 4276 approving Amendment Two to the Cable Television Services Requirements and accepting I-Net Services Concessions in lieu of Liquidated Damage Fees related to Ordinance Number 2890-Cable Television License Agreement between the City of Chandler and Qwest Broadband Services, Inc.

BACKGROUND: Council approved Ordinance 2890 granting US West Communications, Inc., subsequently acquired by Qwest Broadband Services, Inc. (Qwest), a non-exclusive 15-year cable television License Agreement effective November 7th, 1998. One condition of the License was that it would provide universal coverage to the City with a construction schedule build-out to be completed within 5 years of granting the License. This construction deadline was to be reached November 6th, 2003, but economic and internal and competitive conditions delayed this construction. Council approved Ordinance 3507 on December 19, 2003, which amended Qwest's original agreement. This amendment relieved Qwest from the construction schedule and related timeline requirements in consideration for the flexibility to continue their operation and construction under market conditions they were experiencing. In exchange for postponing the construction schedule outlined in the original license and in lieu of having the liquated damages applied, Qwest offered the City concessions, which the City accepted. This included an increase to the City's current Internet connection from a T1 circuit with a 1.54 MB bandwidth to a DS-3 circuit with a 44.376 MB bandwidth with service to the Internet, as well as the provision of the auxiliary equipment needed to expand the Internet services. This service and equipment was provided free of charge to the City for five years with possible extensions based on the amendment's conditions. These extensions have been given annually.

Market conditions have altered Qwest's delivery services for video services to a satellite system. However, Qwest would like to extend the cable license under the arrangement given in Amendment One, but substitute the I-Net Service infrastructure for updated and improved technology of a Gigabit Loop with 200 MBPS Port. This bandwidth increase will give the City expanded Internet capacity which is required due to the City's increased Internet presence. This will also allow for better service to its citizens. This change is in

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Qwest's best interest as this moves the City's connection to newer technology that is easier to support and maintain. In view of the anticipated integration of Qwest and Century Link, the City and Qwest have obtained written authorization from Century Link approving this change.

FINANCIAL IMPLICATIONS: The value to the City of this expanded Internet capacity is about \$80,000 per year which will amount to about \$240,000 for the life of the license.

PROPOSED MOTION: Move to approve Ordinance No. 4276 approving Amendment Two to the Cable Television Services Requirements and accepting I-Net Services Concessions in lieu of Liquidated Damage Fees related to Ordinance Number 2890-Cable Television License Agreement between the City of Chandler and Qwest Broadband Services, Inc.

Attachments: Ordinance No. 4276; Exhibit A

ORDINANCE NO. 4276

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING AMENDMENT TWO TO THE CABLE TELEVISION SERVICES REQUIREMENTS AND ACCEPTING I-NET SERVICES CONCESSIONS IN LIEU OF LIQUIDATED DAMAGE FEES RELATED TO ORDINANCE NUMBER 2890-CABLE TELEVISION LICENSE AGREEMENT BETWEEN CITY OF CHANDLER AND QWEST BROADBAND SERVICES, INC.

WHEREAS, the Chandler City Council approved Ordinance No. 2890 granting a License to US West Communications, Inc., subsequently Qwest Broadband Services, Inc.(hereinafter "Qwest"), a 15-year non-exclusive cable television license effective November 7, 1998; and

WHEREAS, Sections 8 through 14 of its License Agreement require Qwest to deliver specified cable television services, including those related to Public, Educational and Government Access programming services and Section 20 which outlines its fee structure, and

WHEREAS, Qwest requested that the City Council relieve Qwest of the obligation of the provisions of Sections 8 through 14 Cable Television License Agreement dated November 7, 1998 (collectively the "License Agreement"); as well as fee requirements outlined in Section 20 contained in the License Agreement or City Code, and

WHEREAS, the Chandler City Council approved Ordinance No. 3507 (Amendment One to License Agreement) granting US West Communications, Inc., subsequently Qwest Broadband Services, Inc.(Qwest), an extension to certain contractual obligations related to its construction schedule in exchange for concessions related to infrastructure related to the City's Internet connection; and

WHEREAS, Ordinance No. 3507 allows for continual extensions as long as Qwest continues to deliver the Internet concessions; and

WHEREAS, the City and Qwest have agreed that such extensions will continue and that the Internet infrastructure will be upgraded to current available technologies; and

WHEREAS, the City Council has concluded that the proposed modifications to the License Agreement would be in the best interests of the City of Chandler and its citizens; and

WHEREAS, it is in the best of the interests of the City to enter into Amendment Number Two to the Cable Television License Agreement between the City of Chandler, Arizona and Qwest Broadband Services, Inc.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Chandler, Arizona as follows:

1. The City Council hereby approves Amendment Number Two to the Cable Television License Agreement between the City of Chandler, Arizona and Qwest Broadband Services, Inc. attached here to as Exhibit A.
2. The Mayor is hereby authorized to execute Number Two to the Cable Television License Agreement between the City of Chandler, Arizona and Qwest Broadband Services, Inc.
3. That the various City offices and employees be and they hereby are authorized and directed to perform all acts necessary to give effect to this Ordinance.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Maricopa County, Arizona, this _____ day of January, 2011

ATTEST:

CITY CLERK

MAYOR

APPROVED, PASSED AND ADOPTED by the City Council of the City of Chandler, this _____ day of _____, 2011.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4276 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2011 and that a quorum was present thereat.

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *SKM*

EXHIBIT A

AMENDMENT NUMBER TWO TO THE CABLE TELEVISION LICENSE AGREEMENT BETWEEN CITY OF CHANDLER, ARIZONA AND QWEST BROADBAND SERVICES, INC.

This Agreement to the Cable Television License Agreement dated November 7, 1998 is made this _____ day of _____, 2011 by and between the City of Chandler (CITY) and Qwest Broadband Services, Inc. (QWEST).

WHEREAS, the parties have entered into that certain Cable Television License Agreement, dated November 7, 1998, which license has been transferred and assigned to QWEST and which license grants to QWEST the right to provide cable television services in the City of Chandler using CITY property; and

WHEREAS, the License Agreement between the parties requires QWEST to complete certain construction on or before November 6, 2003; and

WHEREAS, due to economic, internal and competitive constraints, conditions have not been favorable for Qwest to continue to complete all of the required construction in accordance with the deadlines set by the original License; and

WHEREAS, the parties desire to waive the requirements for the construction schedule in exchange for the provision of certain benefits to the City.

NOW THEREFORE the parties agree as follows:

1. The obligation of the initial five-year construction schedule for its VDSL system contained in Section 4.02 of Chapter 15 of the Chandler City Code, and Section 16 of the Cable Television License Agreement dated November 7, 1998 (collectively the "License"); as well as all line extension requirements contained in Section 17 of the License; and, all other construction schedule requirements contained in the License or City Code are hereby postponed and extended.
2. In exchange for such relief, Qwest hereby agrees to and shall provide to the City I-Net Services specified in this Amendment until the expiration of the License, or until Qwest completes the construction schedule as previously required. If, upon expiration of the License Qwest has not completed its construction, then the City will have received the I-Net Service, free of charge, throughout the term of the license, set to expire November 6, 2013.
3. The City and Qwest agree that the Current I-Net Service specified in Amendment One will be terminated at a mutually agreed time and Qwest will substitute I-Net Service provisions to the minimum level of a Gigabit Loop with a 200 Mbps Port to the 250 Commonwealth location (the "New Service") in lieu of the Current Service. Henceforth,

provision of the New Service shall be Qwest's obligation in accordance with Paragraph 2 of Amendment 1.

4. All other terms and conditions of the Cable Television License Agreement as amended referenced above shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2011

CITY OF CHANDLER

QWEST BROADBAND SERVICES, INC.

By: _____

Title: _____

MAYOR

ATTEST:

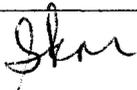
ATTEST:

CITY CLERK

Its _____

APPROVED AS TO FORM:

CITY ATTORNEY



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4. All other terms and conditions of the Cable Television License Agreement as amended referenced above shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2011

CITY OF CHANDLER

QWEST BROADBAND SERVICES, INC.

By:
Title:



MAYOR

Sr VP-Public Policy &
Government Relations

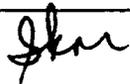
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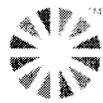
ATTEST:

CITY CLERK

Its _____

APPROVED AS TO FORM:

CITY ATTORNEY 



CenturyLink™

Terry Beeler
Region President
Western Region

6700 Via Austi
Las Vegas, Nevada 89119
Tel: 702.244.7270

January 4, 2011

Margaret Coulter
Regulatory Affairs Manager
Transportation and Development Department
City of Chandler
P.O. Box 4008
Mailstop 403
Chandler, AZ 85244-3415

Dear Ms. Coulter:

Qwest Broadband Services, Inc. ("Qwest BSI") currently has a Cable Television License Agreement dated November 7, 1998 (the "Franchise") with the City of Chandler ("City"). Qwest BSI is a wholly owned subsidiary of Qwest Services Corporation, which is a wholly owned subsidiary of Qwest Communications International, Inc. ("QCII").

CenturyLink, Inc. ("CenturyLink") has agreed to acquire QCII pursuant to an agreement between the parties dated April 21, 2010. Under the terms of the parties' merger agreement ("Transaction"), QCII will become a wholly-owned subsidiary of CenturyLink, subject to and contingent upon closing of the Transaction. Following the closing of the Transaction, Qwest BSI will remain an indirect subsidiary of QCII, which will become a wholly-owned, first-tier subsidiary of CenturyLink. Although there is a parent level change in control of Qwest BSI, the Franchise will remain with Qwest BSI.

CenturyLink acknowledges that the Franchise has been amended whereby Qwest BSI agreed to provide City with a broadband circuit for I-NET through the expiration of the Franchise, or until Qwest BSI completes the construction schedule as set forth in the Franchise. CenturyLink agrees and acknowledges that the parent level change in control of Qwest BSI will not affect, diminish, impair or supersede the binding nature of the existing applicable ordinances, franchises, resolutions and agreements applicable to operation of the cable system authorized by the Franchise, and that Qwest BSI shall comply with each and every provision of the Franchise including all lawful applicable ordinances, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto, as applicable.

Please feel free to contact CenturyLink or Qwest if you have any questions regarding this matter.

Sincerely,

Terry Beeler
Region President