

AGREEMENT A3-2024

**FRANCHISE AGREEMENT
QWEST CORPORATION DBA CENTURYLINK QC (“CENTURYLINK”)**

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of North Ogden, Utah (hereinafter “CITY”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 505 East 2600 North, North Ogden, Utah, 84414, and Qwest Corporation dba CenturyLink QC, a Colorado Corporation (hereinafter “PROVIDER”) with its principal offices at 1025 Eldorado Blvd, Broomfield, CO 80021.

WITNESSETH:

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 8, Chapter 2 of the North Ogden City Municipal Code (hereinafter the “Telecommunication Rights-of-Way Ordinance”) which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and the PROVIDER agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.

1.2 Ordinance. The CITY has adopted the Telecommunications Rights-of-Way Ordinance which is attached to this Agreement as Exhibit “A” and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance to the extent such terms are consistent with applicable federal and state law, and except to the extent otherwise noted in this Agreement, which terms shall not be deemed in conflict with the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to

require the PROVIDER to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined to be unlawful or beyond the CITY's authority.

1.3 Ordinance Amendments. The CITY reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time. The CITY shall give the PROVIDER notice as required under the Utah Open Meetings Act and other relevant provisions of Utah and North Ogden City Code. No special notice is implied or required. An opportunity to be heard concerning any proposed amendment is part of the public meeting legislative process. If there is any inconsistency between the PROVIDER's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, or if such amendments materially and adversely impact PROVIDER's rights or increase its risks, the provisions of this Agreement shall govern during its term provided that such terms are not otherwise rendered illegal under state or federal laws. Otherwise, the PROVIDER agrees to comply with any such amendments, subject to and reserving its rights and remedies under applicable state and federal law.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the City. All equipment which is used to broadcast or receive a signal via wireless, satellite, or other similar way may not be located in the public right of way, but must be located on a separately leased adjoining parcel and comply with all land use ordinances, building department approvals and other relevant City Code sections. All equipment which shall be constructed above ground in the existing right of ways shall receive approval from the appropriate city authority prior to installation, including a review for safety purposes. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance.

1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, the PROVIDER shall pay to the CITY a tax of 3.5% of the gross receipts in accordance with the Municipal Telecommunication

License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410), less any business license fee or business license tax lawfully enacted by the CITY, which lawfully enacted taxes shall in no event exceed the amount payable pursuant to the Municipal Telecommunications License Tax Act. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

2.2 Equal Treatment. CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the CITY will either (a) impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the CITY, if applicable, or (b) waive collection of the fees from PROVIDER provided for herein that are subject to such competition.

ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein ~~may be~~ will be renewed by the PROVIDER upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, ~~by~~ unless providing to the CITY's representative designated herein written notice of the PROVIDER's intent to not renew ~~not less than ninety (90) calendar days before the expiration of the initial franchise term.~~

3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon final expiration of the franchise granted herein, whether by lapse or time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, and failure to the parties to enter a new franchise, the PROVIDER shall have the right to either (a) abandon its System in place or (b) remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of the PROVIDER, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS.

4.1 City Uses of Poles and Overhead Structures. The CITY shall have the right, without cost payment of attachment fees, to use all approved poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or similar governmental, non-commercial purposes and subject to the PROVIDER's reasonable safety and availability review. ~~any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.~~

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole capacity or do any make ready work, alter the manner in which the PROVIDER attached equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments at the CITY's expense.

ARTICLE 5. POLICE POWERS.

The CITY expressly reserves, and the PROVIDER expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY.

6.1 Meet to Confer. ~~The PROVIDER and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters,~~ The PROVIDER and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of any relevant changes in applicable law developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such legal developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will meet and confer negotiate, in good faith, as to

whether it would be appropriate to enter an amendment to this Agreement. As used herein, “material consideration” for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City’s Excavation Permit Ordinance. For the PROVIDER, “material consideration” is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the CITY’s Excavation Permit Ordinance.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

7.1 Grounds for Termination. Subject to the Telecommunications Rights-of-Way Ordinance provisions concerning incumbent local exchange carriers like the PROVIDER, ~~t~~he CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The PROVIDER fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after receipt of written notice by the CITY of such failure;

(b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER’s control, and with respect to which redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the PROVIDER notice of such determination, the PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the PROVIDER; or

(c) The PROVIDER becomes permanently insolvent, ~~unable or unwilling to pay its debts,~~ is adjudged bankrupt, or all ~~or part~~ of its facilities ~~should are required to~~ be sold under an instrument to secure a debt and ~~is are~~ not redeemed by the PROVIDER within sixty (60) days.

(d) The PROVIDER, or its contractors damage CITY or private property during the installation and maintenance of its telecommunication network and fails to repair or compensate the ~~property owner~~ CITY for the damage. When not timely cured consistent with Section 7.1(b), above, Ssuch failure isshall constitute a material breach of this

Agreement contract and PROVIDER shall be given sixty (60) days written notice to complete any required repairs follow the timelines outline in 7.1(b) above.

7.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of the CITY.

7.3 Remedies at Law. In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 8. PARTIES' DESIGNEES.

8.1 CITY designee and Address. The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at Attn: City Recorder, 505 East 2600 North, North Ogden, UT 84414, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

8.2 PROVIDER Designee and Address. Designated personnel from the PROVIDER's Network Infrastructure Services Department~~CEO David Bradshaw or his or her designee(s)~~ shall serve as the PROVIDER's representatives regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's ~~headquarter~~ offices at 1025 Eldorado Blvd, Broomfield, CO 80021, and such other office as the PROVIDER may designate by written notice to the CITY.

8.3 Failure of Designee. The failure or omission of the CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppels by the CITY or PROVIDER.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, the PROVIDER shall furnish to the CITY evidence that it has adequate general

liability and property damage insurance. The evidence may consist of a statement that the PROVIDER is effectively self-insured if the PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.

9.2 Indemnification. The PROVIDER agrees to indemnify, defend and hold the CITY harmless from and against any and all third party claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from to the extent caused by the PROVIDER's negligent or willful acts, including the acts of PROVIDER's contractors, or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to the PROVIDER of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit the PROVIDER to assume the defense of such with counsel of the PROVIDER's choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, the PROVIDER shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY or an unrelated third party.

ARTICLE 10. INSTALLATION

10.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, PROVIDER shall coordinate with the CITY ~~and other providers or users of the CITY Rights-of-Way,~~ when such cuts and excavations will be made. ~~Unless otherwise permitted~~ When the same can reasonably be accomplished without significant delay or increased cost to PROVIDER, and subject to applicable law, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

10.2 Underground Installation. The CITY generally requires utilities to be located underground in areas being newly developed. In all locations within the CITY where all utility services are required to be located underground in accordance with permits issued for such new developments, unless otherwise authorized by CITY in writing and subject to applicable law, all of PROVIDER's new facilities shall be constructed underground. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless all other providers in the same location are required to do so. If undergrounding is caused by or required due to the activities of a third party, PROVIDER's undergrounding costs shall be borne by the third party, and the CITY agrees to make the same a condition of any permits issued to such third party. Unless otherwise provided, all of PROVIDER's facilities within the CITY shall be constructed underground. Notwithstanding the provisions of Article 1.3 of this Agreement,

~~PROVIDER expressly agrees to install and maintain all of its facilities in accordance with CITY Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.~~

10.3 Damage to Property. If during installation of any facility, line, or equipment under the provisions of this Agreement, PROVIDER, its contractors, agents, or other individuals damage any municipal property, including all street improvements, utility improvements, or third party improvements, PROVIDER agrees to fully restore the property, at ~~their-its~~ expense, to their original condition in accordance with established municipal standards. If PROVIDER'S agents, contractors, or other individuals insurance coverage does not fully cover the costs of repairs to the extent required because of any act of PROVIDER, its agents, contractors or other individuals, PROVIDER shall complete the repairs at ~~their-its~~ own expense. ~~If property damage occurs~~Under the foregoing circumstances, CITY may require, at its discretion, that PROVIDER complete the necessary repairs. Under no condition is CITY required to complete the repairs and seek to obtain repayment from PROVIDER or insurance companies unless CITY elects to do so.

10.4 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) days in the event of a (a) relatively minor, temporary relocation (i.e., where facilities will be returned back to their original state and location) and no less than ninety (90) days for a (b) relatively major temporary or (c) permanent relocation, the PROVIDER shall~~ten (10) business days, the PROVIDER shall do the following at its own expense:~~ protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, or any property owned by the CITY, or for any City-CITY Pproject, any property of the PROVIDER when lawfully required by the CITY by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure to be used for non-commercial purposes, municipal buildings, or any other type of public structures or improvements which are not used to compete with the PROVIDER'S services. In the event that the CITY requests relocation efforts from PROVIDER for reasons not included in this paragraph, or for aesthetic reasons, then CITY agrees to pay all costs associated with relocation. PROVIDER shall not be required to pay for the relocation of PROVIDER'S equipment, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by the CITY through the permitting process. Likewise, PROVIDER shall not be required to pay for the relocation of PROVIDER'S equipment, and may require advance payment for costs and expense from a third party, to the extent such removal or relocation is made at the request or in support of the activities of such third party; the CITY shall make the same a permitting condition of the third party's permit(s).

In the event of an emergency, the CITY shall notify the PROVIDER, who shall immediately respond to the emergency. Should the PROVIDER be unable to respond in a timely manner, the CITY shall take such action as is necessary to meet the emergency at the expense of PROVIDER, if such action by the CITY would otherwise have been at the expense of PROVIDER.

ARTICLE 11. GENERAL PROVISIONS

11.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

11.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

11.3 Time of Essence. Time shall be of the essence of this Agreement.

11.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held in include the plural number and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

11.5 No Presumption. All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

11.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

11.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this ____ day of _____, 20__

“CITY”
CITY OF NORTH OGDEN

By: _____
S. Neal Berube, Mayor

ATTEST:

Susan Nance, City Recorder

APPROVED AS TO FORM:

Jonathan Call, City Attorney

“PROVIDER”

~~Vaix Inc Dba Senawave
Communications~~ Qwest Corporation dba
CenturyLink QC, an Utah Colorado
Corporation

By: _____
~~David Bradshaw~~ Shaun Giesler, Chief

~~Executive Officer~~ Manager NIS ROW

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) :ss.
COUNTY OF _____)

On the ___ day of _____, 20__ personally appeared before me ~~David Bradshaw~~ Shaun Giesler, who being by me duly sworn did say that he or she is the ~~Chief Executive Officer of Senawave Communications~~ Network Infrastructure Manager of CenturyLink, and that the foregoing instrument was signed on behalf of said company by authority of its board of directors and/or its company documents; and he acknowledged to me that said company executed the same.

Notary Public
Residing at: _____
My Commission Expires: _____

EXHIBIT "A"
Telecommunications Rights-of-Way Ordinance