

ORDINANCE NO. 01-03-2021

AN ORDINANCE GRANTING A FRANCHISE TO QWEST COMMUNICATIONS D/B/A CENTURYLINK QC ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES ("CENTURYLINK") TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF SANTAQUIN, UTAH ("THE CITY").

WHEREAS, Santaquin City as a municipality and political subdivision of the state of Utah owns and controls certain public ways and rights-of-way for the health, safety and welfare of the City and its residents; and

WHEREAS, CenturyLink is a telecommunications company that provides certain telecommunications products and service to customers through a network of transmission facilities (the "System"); and

WHEREAS, the Utah Legislature enacted legislation including the Utah Municipal Telecommunications Tax Act (the "Act"), which allows municipalities and telecommunications companies to enter into franchise agreements governing the imposition and collection of franchise taxes in exchange for a telecommunication company's use of certain public rights-of way; and

WHEREAS, the City desires now to adopt an ordinance granting CenturyLink a franchise to operate the System pursuant to an agreement containing certain terms and conditions including the payment of franchise taxes in accordance with the provisions of the Act;

NOW THEREFORE, be it ordained by the City Council of Santaquin City that it is in the public interest to grant CenturyLink a Franchise to operate the System pursuant to the terms and conditions contained herein.

SECTION 1. Grant of Franchise. The City hereby grants to CenturyLink the right, privilege and authority to install, construct, maintain, operate, upgrade, repair, relocate and remove its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and other public ways in the City ("Public Ways", or in the singular "Public Way"), for the purpose of providing telecommunication services to the City's inhabitants and other customers of CenturyLink located within the City's corporate limits.

SECTION 2. Acceptance by CenturyLink. Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file an unqualified written acceptance thereof with the City; otherwise the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The initial term of this Franchise is ten (10) years commencing on the date of Acceptance by CenturyLink as set forth above in Section 2 and shall thereafter automatically renew from year-to-year unless either party gives advance written notice to the other party at least 120 days prior to expiration of the initial term or subsequent annual term requesting the parties enter into good faith discussions to reach terms of a new agreement.

SECTION 4. Records Inspection. CenturyLink shall make available to the City at a CenturyLink office, upon reasonable advance written notice of no fewer than sixty (60) days and not more often than once every two (2) years, such relevant information pertinent only to enforcing the terms of this Ordinance in such form and at such times as CenturyLink can reasonably make available. Subject to applicable laws, any information that CenturyLink provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein,

any such information provided to the City shall be returned to CenturyLink following review, without duplication, unless CenturyLink grants the City written permission to duplicate the information, which reasonable permission shall not be unreasonably withheld.

SECTION 5. Non-Exclusive Franchise. The right to use and occupy the Public Ways shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's and other entities' use, however, shall not unreasonably interfere with CenturyLink's Facilities or the rights granted CenturyLink herein. Neither shall CenturyLink unreasonably interfere with the uses of the City or other authorized users of the public rights-of-way.

SECTION 6. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens consistent with applicable federal and state law. The City agrees to notify CenturyLink of any such changes potentially applicable to this Franchise.

SECTION 7. Indemnification. The City shall not be liable for any property damage or loss or injury to or death of any person that occurs as the result of the construction, operation or maintenance by CenturyLink of its Facilities. CenturyLink shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of CenturyLink's use of the Public Ways. The City shall: (a) give prompt written notice to CenturyLink of any such claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit CenturyLink to assume the defense of such claim, demand, or lien with legal counsel of CenturyLink's selection. CenturyLink shall not be subject to liability for any settlement or compromise made without its prior written consent. Notwithstanding the other provisions contained herein, CenturyLink shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

SECTION 8. Insurance Requirements. CenturyLink will maintain in full force and effect for the Term of the Franchise, at CenturyLink's expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Utah, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System, including the Facilities, by CenturyLink. Such insurance will be in an amount not less than \$2,500,000.00. CenturyLink will also maintain Worker's Compensation coverage throughout the term of this Franchise as required by law. Evidence of such insurance is available at www.centurylink.com/moi.

SECTION 9. Plan, Design, Construction and Installation of CenturyLink's Facilities.

9.1 All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

9.2 CenturyLink shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. CenturyLink will provide plans of new facilities to be placed in the Public Ways pursuant to a permit issued by the City. CenturyLink will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs or for normal maintenance of its facilities that will not materially impact use of the Public Ways by others.

9.3 To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation,

renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

9.4 If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or public property at CenturyLink's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration, normal wear and tear excepted.

9.5 CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, CenturyLink shall first obtain a permit from the City in accordance with subsection 10.2 hereof.

9.6 Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating municipal infrastructure, including but not limited to its sewers, streets, water distribution lines, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of CenturyLink's poles, wires, conduits, conductors, pipes, and appurtenances.

9.7 CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

SECTION 1011. Relocation of Facilities.

10.1 Relocation for the City. CenturyLink shall, upon receipt of advance written notice of not fewer than ninety (90) days, protect, support, temporarily disconnect, relocate, or remove any CenturyLink property located in a Public Way when required to do so by the City for municipal projects. CenturyLink shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way.

10.2 Relocation for a Third Party. CenturyLink shall, at the request of any person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable and if possible, any CenturyLink property, provided that the cost of such action is borne by the person requesting it and CenturyLink is given reasonable advance written notice and sufficient time to take the appropriate action. In such situation, CenturyLink may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than forty-five (45) days for a temporary relocation, and no fewer than one hundred twenty (120) days for a permanent relocation.

10.3 Alternatives to Relocation. CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such evaluation. The City shall consider each alternative proposed by CenturyLink. In the event the City ultimately determines that there is no other reasonable alternative, CenturyLink shall relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, CenturyLink shall in all cases have the right to abandon the Facilities.

SECTION 11. Vegetation Management. CenturyLink shall have the authority to trim trees and other growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

SECTION 12. Payment by CenturyLink.

12.1 For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Franchisee of the City's Right-of-Way, the Franchisee will pay to the State of Utah for the benefit of the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the maximum municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended (the "Municipal Telecommunications Tax Act"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Act, and shall be paid by the Franchisee to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder. Compliance by the Franchisee with the terms and provisions of the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Franchise with respect to the calculation and payment of the Franchise Fee.

12.2 A customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer municipal telecommunications license taxes authorized by this part unless the customer meets the same requirements that a purchaser is required to meet to bring a cause of action against a seller for a refund or credit as provided in Utah Code Ann. § [59-12-110.1\(3\)](#).

SECTION 13. Revocation of Franchise for Noncompliance.

13.1 In the event that the City believes that CenturyLink has not materially complied with the terms of the Franchise, the City shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

13.2 CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 14.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

13.3 In the event that CenturyLink does not comply with subsection 14.2, above, unless the parties agree to an extension of the time provided in subsection 14.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide CenturyLink at least twenty (20) days' prior written notice of, and the opportunity to be heard, at the hearing.

13.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.3, determines that CenturyLink is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 14.5.

13.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to CenturyLink including a statement of all reasons for such revocation. CenturyLink shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City

may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon CenturyLink, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give CenturyLink an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. CenturyLink may appeal the City 's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the City 's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

13.6 Notwithstanding the foregoing provisions in this Section 14, CenturyLink does not waive any of its rights under applicable law.

SECTION 14. No Waiver of Rights. Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 15. Transfer of Franchise. CenturyLink's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without prior notice to and prior approval by the City, such approval shall not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for any rights, title, or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness, or to an entity that acquires substantially all the assets or equity of CenturyLink by sale, merger, consolidation or reorganization, approval by the City shall not be required.

SECTION 16. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon in writing by the City and CenturyLink.

SECTION 17. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received upon actual receipt or refusal of delivery if sent by (a) personal delivery, (b) United States Mail, postage prepaid, certified, return receipt requested, or (c) nationally recognized overnight courier, and addressed to the Parties as set forth below:

The City:

CITY NOTICE ADDRESS

Santaquin City
ATTN: City Manager
275 West Main Street
Santaquin, Utah 84655

with a copy to:

Brett B. Rich, City Attorney
Nielsen & Senior

1145 South 800 East, Suite 110
Orem, UT 84097

To CenturyLink:

CenturyLink
ATTN: ROW/NIS Manager
100 CenturyLink Drive
Monroe, LA 71203

with a copy to:

CenturyLink
ATTN: Legal Department
931 14th Street
Denver, CO 80202

SECTION 18. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having appropriate jurisdiction thereof, or unconstitutional, illegal or invalid by any court having appropriate jurisdiction thereof, 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 hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this _____ day of _____, 2021.

THE CITY OF SANTAQUIN, UTAH

By: _____
Kirk F. Hunsaker, Mayor

Attest: K. Aaron Shirley, City Recorder

ACCEPTED BY CENTURYLINK:

QWEST COMMUNICATIONS D/B/A CENTURYLINK QC

BY: _____

TITLE: _____

DATE: _____

PRN: