

ORDINANCE NO. 2017- 06

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO, LLC, FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF PHENIX CITY, ALABAMA

WHEREAS, Zayo LLC (hereinafter referred to as the “the Company”) desires to maintain and construct a fiber-optic transmission line within certain public rights-of-way within the City of Phenix City, Alabama (“City”); and

WHEREAS, the Company has requested a franchise from the City in order to maintain and construct a fiber-optic transmission line within the corporate limits of the City; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant a franchise to allow Company to maintain fiber-optic transmission lines in accordance with the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PHENIX CITY, ALABAMA, AS FOLLOWS:

The City Council of the City does hereby grant to Company a non-exclusive franchise granting the limited authority to maintain and construct a fiber-optic transmission line in the City in and along certain rights-of-way outlined in Exhibit A below, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the 10th day of November, 2017, by and between the City of Phenix City, Alabama (hereinafter referred to as the “City”), and Zayo Group LLC, (hereinafter referred to as the “the Company”).

WITNESSETH:

The City and the Company do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “City” means the City of Phenix City, Alabama.

1.2 “Code” means the City of Phenix City, Alabama Municipal Code of Ordinances, as may from time to time be amended.

1st Reading
3/21/17
Talked
4/13/17
Approved
April 13, 2017

1.3 “Company” is Zayo LLC, or its successors in interest, in accordance with the provisions of this franchise.

1.4 “Governing Body” or “City Council” means the City Council of the City of Phenix City, Alabama.

1.5 “Gross Revenues” means all local revenues, in whatever form and from all sources, determined in accordance with generally accepted accounting principles that are received or accrued by Company from the transmission of telephonic data or other electronic messages within the City. Gross Revenue shall include all local revenues received from any person not in any way affiliated with Company, with a deduction for Company’s uncollectible accounts, but without deduction for operating expenses, accruals, or any other expenditure. Notwithstanding the foregoing, Gross Revenue shall not include taxes or fees paid to governmental entities, or any revenues that are already included in the calculation of fees payable to the City pursuant to another franchise agreement, or charges paid by Company to any other telecommunications carriers. The foregoing shall in no way be interpreted to allow Company to avoid the payment of franchise fees to City for revenues it may derive from other telecommunications providers for such provider’s use of Company facilities within the City.

1.6 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.7 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.8 “System” shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement.

1.9 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing (e.g., data, and voice), without change in the form or content of the information as sent and received.

1.10 “Telecommunication Service(s)” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

1.11 “Telecommunication System” means the cables, wire, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment or Facilities designated and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications to or from locations within the City.

1.12 “Use Fee” means the fee paid by a Provider to the City for locating, maintaining and operating Facilities in the Rights-of-Way.

SECTION 2. Grant of Authority. The City hereby grants to the Company the non-exclusive and limited authority to construct, install and maintain and operate a fiber-optic transmission line in and along the Rights-of-way in the City (hereinafter referred to as the “System”). The Company shall obtain the approval of the City Engineer of the location of the System before constructing, expanding or extending the System within the City pursuant to this Agreement. Attached as Exhibit A is the proposed initial location of the System that the Company intends to submit to the City Engineer. The Company shall not provide Video Services within the City pursuant to this Agreement. The Company shall be required to enter into a separate Cable Television franchise agreement with the City if the Company chooses to provide video services.

2.1 Prior to the commencement or continuation of any construction or operation in the City, the Company shall be duly authorized to do business in Alabama and shall have received any necessary certificate of public convenience and necessity or other required authorization from Alabama Public Service Commission, the Federal Communications Commission or other authorized regulatory body. Evidence that such authority has been acquired or that it is not required shall be filed with the City upon request of the City.

2.2 All work in the Right-of-Way shall be in accordance with the Code and all other applicable state and federal standards, codes and ordinances, and will be done under the general supervision of the City. Company shall apply for and obtain all required permits from City as specified in the Code before Company shall undertake any construction in the Right-of-Way. All new construction will, unless specifically authorized by the City, be placed underground if the City deems necessary for the public convenience and safety and generally to control and regulate the use of the streets as required by Section 11-43-62 of the Alabama Code. The placement of above ground pedestals, meter bases and related equipment shall be permitted only as specifically set forth in approved permits and only at the direction of the City with respect to the acceptable location for such facilities.

SECTION 3. Compensation.

3.1 As consideration for the use of the City’s Rights-of-ways as set forth in this Agreement, the Company shall pay the City a franchise fee of five percent (5%) of its Gross Revenues during each calendar year of operation under this franchise. Such payments shall be made quarterly during each calendar year, within forty five (45) days of the close of each quarter. Each franchise fee payment shall be accompanied by a certified report from a representative of the Company, which shows the basis for the computation of all monthly service charges revenue from providing local Telecommunications Services to Persons located within the City limits during the period for which such franchise fee payment is made. In the event that franchise fee payment is not actually received by the City on or before the applicable due date set forth in this section or is underpaid the Company shall pay in addition to the payment, or sum due, interest from the due date at the state legal interest rate of 6% annually (Alabama Code § 8.8.1). If the Company does not provide Telecommunication Services within the municipal boundaries of the

City then the Company shall pay the City \$3,000.00 per mile annually for the use of the City's Rights-of-way, until such time as the Company may provide Telecommunications Services within the municipal boundaries of the City.

3.2 All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Company's books and records and such review indicates a franchise fee underpayment of five percent (5%) or more during the entire period reviewed, the Company shall assume all reasonable documented costs of such audit, and pay same upon demand by the City. All documents pertaining to financial matters, which may be the subject of an audit by the City, shall be retained by the Company for a minimum period of six (6) years.

3.3 Public Use Pathways. Company hereby agrees to use by the City restricted to non-commercial governmental purposes at no cost to the City two (2) dark fiber strands along the entire backbone of its fiber optic system, both underground and aerial (hereinafter called the "Public Use Pathway"). The Public Use Pathway, when determined to be installed in a manner which will permit restricted use by the City, shall be accepted by the City. The City shall be allowed use of the Public Use Pathway at no cost to the City, for non-commercial, governmental purposes at public buildings owned and operated by the City along the Public Use Pathway. The Public Use Pathway will be provided to the City as "dark" fiber; such that the City will be solely responsible to "light" and otherwise operate the Public Use Pathway at its own expense. The City may not access Zayo's network under any circumstances. The City shall be responsible for the cost and expense of any damages and liabilities caused by the willful or wanton acts of the City, its employees, or agents resulting from City's use of or access to the Public Use Pathway. The City shall be responsible for its pro rata share of costs related to repair and maintenance of the Public Use Pathway.

SECTION 4. Duration and Term. The franchise granted hereunder shall be for an initial term of ten (10) years (the "Initial Term") commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Company or the City shall have the option to renew this Agreement for an additional ten (10) year term ("Renewal Term") by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party's intent to renew this Agreement.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said Rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this franchise and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this franchise and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1 Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of-way. Company shall present to the City Engineer and Information Technology Director plats of all installations to be installed or constructed listing anticipated types of equipment and facilities, properly identifying and describing them by appropriate symbols and marks, and including annotations of all public ways, streets and roads where the work is anticipated. Maps shall be presented in a scale that allows proper review and interpretation and will be filed no less than ten (10) working days before any installation of said cable or equipment or facilities. Company shall obtain formal approval prior to the commencement of construction. Should the City require any plan additions or modifications prior to issuing formal approval, the City will promptly notify the Company thereof. The Company shall provide the City Engineer and Information Technology Director digital as-built drawings within six (6) months of the completion of the construction. Final drawings will be supplied in Autocad using NAD 83 coordinates, GIS format, and/or such other digital formats as are reasonably acceptable to the Parties.

7.2 Restoration of Rights-of-way. If during the course of the Company's construction, operation or maintenance of the System there occurs a disturbance of any Rights-of-way by the Company, it shall, at its expense, replace and restore such Rights-of-way to a condition comparable to the condition of the Rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The Company shall re-sod disturbed grassed areas and replace all excavated areas, structures, and landscaping to original or better condition in order to minimize the disruption of public property. The work to be done under this Agreement, and the restoration of Rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-way, or remove from the Rights-of-way, any property of the Company 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, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.

7.4 Trimming of Trees and Shrubbery. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.

7.5 Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6 Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Company. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7 Obstructions of Rights-of-Way.

A. Except in the case of an emergency, or with the approval of the City Engineer, no Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

B. The Company shall not so obstruct the Rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways. The Company shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of the Company's construction activities, and will not permit its activities to create a hazard to any persons or property. In the event that any such drill mud, debris or other obstruction caused by the Company's activities encroaches upon the street, the Company shall take immediate corrective action to remove the same.

7.8 Safety Requirements.

A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Company shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City. Company shall meet all City and State requirements for traffic control and notify the City at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency. The Company shall, on the request of any Person holding a permit to move a building temporarily raise or lower its wires to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given at least ten (10) business days advance notice to arrange such temporary wire alterations.

C. All construction, installation, maintenance, and operation of the Telecommunications System or of any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by the FCC or other federal or state regulatory agencies in relation thereto, and local zoning regulations. The Company shall comply with ordinances, rules, and regulations established by the City pursuant to the lawful exercise of its police powers and generally applicable to all users of the Rights-of-way.

D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9 Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. The Company will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Council. The City Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies. The Company shall use directional boring in all areas where no conduit exists, unless otherwise required or approved by the City. Company shall meet all City and State requirements for traffic control and notify the City at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency.

SECTION 8. Enforcement and Termination of Agreement.

8.1 Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.

8.2 Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event the Company fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within thirty (30) days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time not less than five (5) business days therefrom. The City shall notify the Company in writing of the time and place of such meeting and provide the Company with an opportunity to be heard.

8.4 Enforcement. In the event the City, after such meeting, determines that the Company is in default of any provision of this Agreement, the City may pursue any or all of the following remedies:

A. Seek specific performance of any provision which reasonably lends itself to such a remedy;

B. Make a claim against any surety or performance bond which may be required to be posted;

C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;

D. Seek any other available remedy permitted by law or in equity;

E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The City shall give written notice to the Company of its intent to revoke the Franchise on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public meeting. The City shall cause to be served upon the Company, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to an appropriate state or federal court or agency which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such appeal must be taken within thirty (30) days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

8.5 Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Default.

9.1 Each of the following shall constitute a material default by the Company:

A. Failure to make any payments to the City required to be made as set forth in this Agreement;

B. Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;

C. Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;

D. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;

E. The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company;

F. The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

G. If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a

writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

SECTION 10. Work in Rights-of-Way. Prior to any excavation within the Rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the Rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

SECTION 11. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on the policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

SECTION 12. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which directly arise from the negligence or willful misconduct, of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except to the extent those claims, costs, losses, expenses, demands, actions, or causes of action which arise from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular Right-of-way, and the burden and responsibility for making such determination in advance of the

installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Company further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining a franchise pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Company is responsible for all work done in the Rights-of-way pursuant to this Agreement, regardless of who performs the work.

SECTION 16. Payment of Costs. Except as set forth in Section 3.3 hereof, the Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the Rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

SECTION 17. Priority of Use. This Agreement does not establish any priority for the use of the Rights-of-way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the Rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Phenix City, Alabama
Attn: Mayor
601 12th Street
Phenix City, Alabama 36867

The notices or responses to the Company shall be addressed as follows:

Zayo Group, LLC
Attn: General Counsel, Fiber Services
1805 29th Street
Boulder, CO 80301
Phone: 678-666-2495

The City and the Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 19. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance and Agreement.

SECTION 20. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of a certified or cashier's check, approved by the City, in the amount of Twenty Five Hundred Dollars (\$2,500.00) made payable to the City of Phenix City, Alabama and shall serve to recover expenses incurred by the City in the granting of this Franchise. Said expenses shall include attorney's fees and consulting expenses incurred by the City.

SECTION 21. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, which shall not be unreasonably withheld. Company may assign this Agreement to any parent affiliate or subsidiary without City's consent. If there is a change of Control of Company, Company shall promptly notify City and City shall have the right, in its sole discretion, to immediately terminate this Agreement in its entirety without further liability. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 22. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 23. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 24. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in


accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 25. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 26. Repealer Clause. Any Ordinance heretofore adopted by the City Council of the City of Phenix City, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 27. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

PASSED, APPROVED AND ADOPTED this 18th day of April, 2017.



MAYOR









MEMBERS OF THE CITY COUNCIL OF
THE CITY OF PHENIX CITY, ALABAMA

ATTEST:



CITY CLERK

STATE OF ALABAMA

COUNTY OF RUSSELL

APPROVED AND ACCEPTED:

ZAYO GROUP LLC

Name Printed _____

Title Printed: _____

Date: _____