

ORDINANCE NO. 2021-O-21

AN ORDINANCE GRANTING AND ISSUING A COMPETITIVE, NON-EXCLUSIVE FRANCHISE FOR A COMBINED TERM OF TEN (10) YEARS TO, AND AUTHORIZING THE EXECUTION OF THE FRANCHISE AGREEMENT WITH, CINCINNATI BELL EXTENDED TERRITORIES LLC, ITS PERMITTED SUCCESSORS OR ASSIGNS, PROVIDING FOR THE CONSTRUCTION, ERECTION, INSTALLATION, UPGRADE, MAINTENANCE, REPAIR AND OPERATION OF A CABLE TELEVISION SYSTEM FOR THE PROVISION OF CABLE TELEVISION SERVICES IN THE CITY OF INDEPENDENCE, ALL UPON THE TERMS, CONDITIONS AND COVENANTS CONTAINED IN THE FRANCHISE AGREEMENT.

WHEREAS, the Telecommunications Board of Northern Kentucky (the “**Board**” or “**TBNK**”) is a public agency established by the Kenton County Kentucky Fiscal Court and the Cities of Bromley, Covington, Crestview Hills, Edgewood, Elsmere, Fort Mitchell, Fort Wright, Independence, Kenton Vale, Lakeside Park, Ludlow, Park Hills, Ryland Heights, Taylor Mill and Villa Hills (collectively, the “**TBNK Member Government(s)**”) in accordance with the provisions of the Interlocal Cooperation Act of Kentucky (KRS 65.210 - 65.300), and is authorized to exercise jointly the powers of the respective TBNK Member Governments relating to cable television matters, cable services and other telecommunication services, including the negotiation, administration and regulation of cable television franchises, as provided in the formative documents of TBNK (the “**Interlocal Agreement**”); and

WHEREAS, Cincinnati Bell Extended Territories LLC, a wholly-owned subsidiary of Cincinnati Bell Inc. (“**CBET**”) and the present holder of several nonexclusive, competitive Franchise Agreements, each dated as of January 1, 2009 (the “**Prior Franchise(s)**”), providing for cable television services throughout the geographical confines of each of the TBNK Member Governments (collectively, the “**Franchise Area(s)**”), asked each TBNK Member Government, including the City, through the auspices of TBNK, to renew or otherwise replace the Prior Franchises with another franchise providing for the continued ownership, construction, erection, installation, upgrade, maintenance, repair, use and operation of a cable television system and related facilities along, under, over, above, through or across the streets and rights-of-way within the Franchise Areas; and

WHEREAS, in connection with the powers and administrative responsibilities set forth in the Interlocal Agreement, the Board has reviewed for and on behalf of the TBNK Member Governments, including the City, CBET’s performance under the Prior Franchises and has further: (1) identified the present and future cable-related community needs and interests of the TBNK Member Governments and their respective citizens; (2) determined that the foregoing meet the requirements of Section 626 of the Cable Act (47 U.S.C. § 546); (3) resolved that CBET substantially complied with the material terms and conditions of the Prior Franchises under applicable law; (4) considered and determined that CBET has the financial, technical and legal qualifications to own and operate its cable system and to provide cable services over the cable system; and (5) determined that CBET’s plans for owning, constructing, operating and maintaining its cable system are adequate; and

WHEREAS, the Board, acting for and on behalf of the TBNK Member Governments, has further determined that the cable television franchise proposal offered by CBET (often referred to as the Bell Alternative Franchise Agreement or CBET Counterproposal), as modified by: (1) extensive negotiations conducted by the “**Franchise Negotiations Committee**,” a committee comprised of three (3) Board members, the Executive Director of TBNK, and the law firm of Frost Brown Todd LLC; and (2) certain directions and instructions received from the Mission Group or Ad Hoc Committee that is/was comprised

of several government officials of certain TBNK Member Governments; meets the future cable-related community needs and interests of the TBNK Member Governments and their respective citizens, and materially conforms to the aforesaid directions and instructions received from the Mission Group/Ad Hoc Committee (the “**Proposed Franchise Agreement**”); and

WHEREAS, acting in accordance with Sections 163 and 164 of the Kentucky Constitution for and on behalf of each TBNK Member Government, the Board placed in the local newspaper an advertisement seeking bid proposals and the submission of an application from the public at large for the (1) construction, operation, maintenance and repair of a Cable System in, on, over and through the streets and rights-of-way of each of the TBNK Member Governments and (2) provision of cable television services; and

WHEREAS, in response to such advertisement, the Board received prior to 2:00 PM on August 17, 2021 (the time and date by which all bid proposals and applications were to be received), a single bid proposal and application from CBET (the “**CBET Bid Proposal**”) and no other person or entity, together with a form of a franchise agreement dated as of June 1, 2021, which franchise agreement and CBET Bid Proposal had been submitted to the Franchise Negotiations Committee and the members of the Board for consideration (the “**CBET Franchise Agreement**”); and

WHEREAS, after (1) having considered the CBET Bid Proposal, including the accompanying CBET Franchise Agreement, and (2) having made a comparison and evaluation of the aforesaid documents vis-à-vis the Proposed Franchise Agreement, the Board (1) determined that the CBET Bid Proposal and the terms, conditions and covenants of the CBET Franchise Agreement submitted by CBET are identical to the terms, conditions and covenants contained in the Proposed Franchise Agreement in all material respects, and (2) is recommending that the Proposed Franchise Agreement, a copy of which is attached hereto as **Attachment A** and made a part of this Ordinance, be adopted by ordinance and be granted and issued to CBET by each of the TBNK Member Governments, including the City; and

WHEREAS, having afforded the public adequate notice and an opportunity for comment pursuant to 47 USC § 546, and based upon the foregoing recitals and the City’s acceptance of such recitals, the City desires to: (1) accept the CBET Bid Proposal, including the CBET Franchise Agreement, the terms and conditions of which are identical to those contained in the Proposed Franchise Agreement; and (2) grant and issue a nonexclusive, competitive franchise to CBET, for a combined Term of ten (10) years, providing for the continued ownership, construction, installation, upgrade, operation, and maintenance of its cable system throughout the respective Franchise Area of the City, pursuant to and upon the terms, conditions and covenants set forth in the Proposed Franchise Agreement, a copy of which is attached hereto as **Attachment A** and made a part of this Ordinance, as such agreement may be further modified or changed as described below in Section V of this Ordinance. *Except as otherwise defined in this Ordinance, the terms defined in the Proposed Franchise Agreement are used in this Ordinance as defined in the Proposed Franchise Agreement.*

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF INDEPENDENCE, KENTUCKY, AS FOLLOWS:

SECTION I

Based upon the foregoing recitals and acting in accordance with the Cable Act and Applicable Law, and subject to the terms, conditions and covenants set forth in the Proposed Franchise Agreement, CBET is hereby granted for itself and its permitted successors and assigns, a franchise, in complete

form and substance of the Proposed Franchise Agreement, and with the following rights and privileges set forth herein and therein:

(1) to own, construct, erect, install, upgrade, maintain, repair, replace, and operate a Cable System and to provide Cable Services within the geographical limits or Franchise Area of the City;

(2) to locate the Cable System in, upon, along, across, over and under the Streets of the City, as provided in the Proposed Franchise Agreement;

(3) to locate the Cable System on city-owned poles, but subject to (a) the terms and conditions set forth in Article II (Cable System Extension, Operation, Standards and Procedures) and such other provisions of the Proposed Franchise Agreement and (b) any presently existing or future ordinance or regulation of the City; and

(4) as specifically provided in Article II, Section 5.E (Erection, Removal, and Common Use of Poles) of the Proposed Franchise Agreement, CBET, through a separate pole attachment agreement or utility easement agreement with an affected utility, may locate the Cable System on or within the facilities or property of such utility company.

The franchise and privileges granted in this Ordinance and the Proposed Franchise Agreement authorize CBET to provide Cable Service.

SECTION II

The franchise granted in this Ordinance is not exclusive. The City expressly reserves the right to grant to other Persons such rights, privileges, or authorizations that are similar to the rights and privileges herein set forth and in the Proposed Franchise Agreement, in the same or other Streets of the City. The City specifically reserves the right to grant at any time during the Term of the Proposed Franchise Agreement such additional franchises or licenses for a cable television system or broadband network as it deems appropriate.

SECTION III

The Term of the franchise granted in this Ordinance shall be for an initial period of five (5) years, with an automatic renewal period of an additional five (5) year period, but subject to and conditioned upon the terms, requirements and/or qualifications contained in Article I, Section 6 (Duration and Acceptance of Franchise) of the Proposed Franchise Agreement. Subject to Section V of this Ordinance, the Term shall commence: (1) upon the date the last TBNK Member Government adopts an ordinance granting a franchise to CBET upon substantially the same terms, conditions and covenants as are contained in the Proposed Franchise Agreement, and (2) when such franchise agreements are fully executed by the parties thereto. The Effective Date of the Proposed Franchise Agreement shall be evidenced by the Commencement Agreement called for in Article I, Section 6 of the Proposed Franchise Agreement (Duration and Acceptance of Franchise).

SECTION IV

To the extent that there is any resolution or ordinance respecting Cable Systems which, in part or in whole, is directly inconsistent with this Ordinance and which is otherwise applicable to CBET, such part or such whole of the prior resolution or ordinance shall be repealed to the extent of the inconsistency; subject, however, to police and legislative powers reserved by the City below.

All rights and privileges granted in this Ordinance and the Proposed Franchise Agreement are and shall be, at all times during the aforesaid Term, subject to all lawful exercise of the police and legislative powers of the City. CBET shall comply with all Applicable Law and such other ordinances and regulations which the City has adopted or shall adopt, applying to the public generally and to other licensees, grantees, or franchisees.

SECTION V

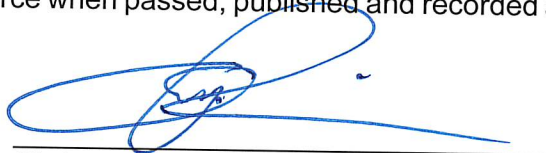
That the Mayor is hereby authorized to execute the Proposed Franchise Agreement for and on behalf of the City, and to comply with all of the provisions thereof; provided, however, that prior to the execution of the Proposed Franchise Agreement, the Board, acting through its negotiation team and legal counsel, is hereby authorized to negotiate with CBET and to make such changes to the Proposed Franchise Agreement as the Board may deem necessary or appropriate, so long as such changes do not affect the overall substance of this Ordinance and the Proposed Franchise Agreement.

SECTION VI

The provisions of this Ordinance are severable; and the invalidity of any provision of this Ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect, so long as they remain valid in the absence of those provisions determined to be invalid.

SECTION VII

That this Ordinance shall take effect and be in full force when passed, published and recorded according to the law.



Christopher J. Reinersman, Mayor

ATTEST:



Gina Gabbard, City Clerk

First Reading: November 1, 2021

Second Reading: December 6 2021

Ayes: 6

Nays: 0

Publication Date: 12/22/2021