



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2024-191, **Version:** 1

An ordinance granting a franchise to Uniti Fiber LLC to construct, operate, and maintain a fiber optic communications system within Metropolitan Nashville and Davidson County under the provision of Metropolitan Code of Laws, Title 6, Chapter 26 (Proposal No. 2024M-006AG-001).

WHEREAS, Title 6, Chapter 26 of the Metropolitan Code (the “Fiber Optic Franchise Ordinance”) sets forth the terms and conditions for companies wishing to construct, operate, and maintain a fiber optic communications system in the public rights-of-way, in whole or in part; and,

WHEREAS, the Fiber Optic Franchise Ordinance is applicable to any fiber optic communications systems used for “producing, receiving, amplifying or distributing audio, video or other forms of electronic signals to or from subscribers or locations within Metropolitan Nashville and Davidson County, but not including the offering to the public cable television services as defined under the Cable Communications Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and/or any franchise granted by the metropolitan government pursuant to said Act;” and,

WHEREAS, Uniti Fiber LLC, a Delaware limited liability company duly authorized to do business in the State of Tennessee (hereinafter “Grantee”), holds a statewide certificate of public convenience and necessity to provide competing local exchange and interexchange service; and,

WHEREAS, Grantee provides communications services that are classified by the Federal Communications Commission as information services, including broadband internet access services, as well as telecommunications services directly regulated by the Tennessee Public Utilities Commission (“PUC”); and,

WHEREAS, Grantee has duly filed an application for a fiber optic communications franchise in order to construct, operate, and maintain a fiber optic communications system within Metropolitan Nashville and Davidson County for the purpose of providing information services, and has filed an affidavit that it is financially capable to do so, pursuant to Section 6.26.030.B.5 of the Metropolitan Code; and,

WHEREAS, the grant of a franchise to Grantee has been approved by the Metropolitan Planning Commission in accordance with Section 11.505 of the Charter of the Metropolitan Government of Nashville and Davidson County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That a franchise to construct, operate, and maintain a fiber optic communications system, as defined by Title 6, Chapter 26 of the Metropolitan Code, within Metropolitan Nashville and Davidson County is hereby granted to Grantee in accordance with the terms and conditions of the Fiber Optic Franchise Ordinance (except as otherwise provided in the attached Fiber Optic Communications Franchise Contract), and for a term of 15 years.

Section 2. That the Fiber Optic Communications Franchise Contract by and between The Metropolitan Government of Nashville and Davidson County and Grantee, which contract is attached hereto and by reference made a part of this Ordinance, is hereby approved and the Metropolitan Mayor is hereby authorized to execute said contract.

Section 3. That in all matters concerning the rights-of-way, the Grantee will comply with the provisions of the Americans With Disabilities Act of 1990, as amended, and the Rehabilitation Act of 1973.

Section 4. That this Ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance grants a franchise to Uniti Fiber LLC to construct, operate, and maintain a fiber optic communications system within Metropolitan Nashville and Davidson County under the provisions of Chapter 6.26 of the Metro Code applicable to franchises for Fiber Optic Communications Services.

Section 6.26.020 defines "fiber optic communications" or "fiber optic services" as a network of cables, wires, lines, towers, wave guides, optic fiber, microwave, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing audio, video or other forms of electronic signals to or from subscribers or locations within Metropolitan Nashville and Davidson County, but not including the offering to the public cable television services.

This ordinance would approve a 15-year franchise for Uniti Fiber LLC for the operation of its fiberoptic network, which appears to be limited to underground fiber optic cables on a narrow section of Litton Avenue near Northview Avenue. Uniti Fiber LLC will be required to pay \$0.19 per year as a reasonable estimate of Metro's costs associated with owning, maintaining, and managing the public rights-of-way used by the company. This amount would increase if Uniti Fiber LLC decides to use additional rights-of-way. Further, the fee will be subject to renegotiation if Metro conducts a new cost study or revises Chapter 6.26 of the Metropolitan Code prior to the expiration of the franchise term.

Section 6.26.240 provides that fiber optic providers are to pay a franchise fee in an amount equal to 5% of gross revenues. However, Tennessee courts have held that the 5% gross revenue amount applicable to telecommunications/fiber optic providers is not allowed.

Uniti Fiber LLC has provided a \$2,000,000 certificate of insurance naming Metro as an insured party.

This ordinance has been approved by the Planning Commission.

Fiscal Note: Metro will receive \$0.19 per year as a reasonable estimate of costs associated with owning, maintaining, and managing the public right-of-way. This fee is subject to renegotiation if additional right-of-way is used by the company, a new cost study is conducted, or upon the expiration of the agreement.