

**AN ORDINANCE
BY**

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT WITH COGENT FIBER SERVICES, INC., A GEORGIA CORPORATION, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT AND WAIVING CERTAIN PROVISIONS OF THE ROW FOR THIS INSTANCE ONLY; AND FOR OTHER PURPOSES

WHEREAS, COGENT FIBER SERVICES, INC., desires to provide telecommunications services on, under over and through the public right-of-way of the City; and

WHEREAS, COGENT FIBER SERVICES, INC., has negotiated a franchise agreement with the City, which provides such access and preserves the rights of the City.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

SECTION 1: That the Mayor be and is hereby authorized to execute a franchise agreement with COGENT FIBER SERVICES, INC., for use of the public right-of-way for telecommunications purposes.

SECITON 2: That such franchise agreement shall expire and terminate on April 1, 2006. -

SECTION 3: COGENT TELECOMMUNICATIONS SERVICES, INC., shall pay the City an annual franchise fee equal to three percent (3%) of the franchisee's annual Gross Revenue, provided that in any calendar year that Grantee's Gross Revenue does not exceed \$500,000.00, the Franchise Fee shall be \$15,000.00 per year; provided further, however, that in no event will the Franchise Fee exceed an annual inflation-based cap. During the first two years of this Agreement, this cap will be set at eleven million dollars (\$11,000,000.00) annually. For the following three years of this Agreement, this eleven million dollar (\$11,000,000.00) cap will be increased annually at the anniversary date of the execution of this Agreement, by the rate of inflation, which will be measured by the percentage change in the Gross-Domestic-Price Index ("GDI"), which is the gross domestic product fixed weight price index calculated by the United States Department of Commerce. The Grantee's obligation to pay the Franchise Fee shall commence on the Effective Date and continue throughout the Term; fees shall be paid on a quarterly basis for the preceding quarter, and shall be due on April 15, July 15, October 15, and the 15th day of January of each year throughout the Term. In the quarter, the Franchise Fee shall be prorated relative to the number of days in the quarter that the Franchise is in effect. On or before each quarterly payment date, Grantee shall provide a certificate, signed and attested to by the appropriate corporate officers or authorized corporate representatives, which verifies Grantee's Gross Revenues for the prior quarter.

SECTION 4: That the City Attorney shall prepare a franchise agreement containing all of the

foregoing terms, which shall be approved by the City Attorney as to form.

SECTION 5: That said franchise agreement shall not be binding on the City until executed by the Mayor sealed by the Municipal Clerk and delivered to COGENT FIBER SERVICES, INC.

SECTION 6: That the City hereby modifies, waives or amends for this instance only, the following provisions of Chapter 138: 138-127 (h)(1)-Compensation; 138-134 (a)(1) —Term of the franchise; 138-127 (h)(7)-Audit; 138-134 (a)(12)-Transfer provisions.

RCS# 4632
4/21/03
3:49 PM

Atlanta City Council

Regular Session

MULTIPLE

03-O-0457; 03-O-0460; 03-O-0464;
03-O-0471; 03-O-0474; 03-O-0475
FILE

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	NV Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	B Woolard

MULTIPLE

03-0-0474

(Do Not Write Above This Line)

AN ORDINANCE BY:

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT WITH COGENT FIBER SERVICES, INC., A GEORGIA CORPORATION, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT AND WAIVING CERTAIN PROVISIONS OF THE ROW FOR THIS INSTANCE ONLY; AND FOR OTHER PURPOSES

FILED BY CITY COUNCIL

APR 21 2003

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 3/17/03

Referred To: C.C.

Date Referred _____

Referred To: _____

Date Referred _____

Referred To: _____

Committee _____

Date _____

Chair _____

Referred To _____

First Reading

Committee City Council

Date April 2003

Chair [Signature]

Referred To _____

Action [Signature]

Fav, Adv, Hold (see rev. side) _____

Other _____

Members [Signature]

Refer To 2nd Reading / 1st Adv.

Committee _____

Date _____

Chair _____

Referred To _____

Action _____

Fav, Adv, Hold (see rev. side) _____

Other _____

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Referred To _____

Action _____

Fav, Adv, Hold (see rev. side) _____

Other _____

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Referred To _____

Action _____

Fav, Adv, Hold (see rev. side) _____

Other _____

Members _____

Refer To _____

FINAL COUNCIL ACTION

2nd 1st & 2nd 3rd

Readings

Consent V Vote RC Vote

CERTIFIED

CERTIFIED

APR 21 2003

[Signature]

CERTIFIED

APR 21 2003

[Signature]

MUNICIPAL CLERK

MAYOR'S ACTION