

AN ORDINANCE
BY CITY UTILITIES COMMITTEE

04-0-1750

AN ORDINANCE TO CORRECT THE PROVISIONS OF ORDINANCE 04-O-1204, SO AS TO RESTATE THE TERM OF AN AGREEMENT PREVIOUSLY AUTHORIZED BETWEEN THE CITY OF ATLANTA AND NEXTG NETWORKS OF NEW YORK, INC. D/B/A/ NEXTG NETWORKS EAST FROM TWO YEARS TO FIVE YEARS, TO BE IN CONFORMANCE WITH THE TERMS GRANTED OTHER TELECOMMUNICATIONS PROVIDERS; TO AUTHORIZE THE MAYOR OR HER DESIGNEE TO EXECUTE THE PREVIOUSLY AUTHORIZED AGREEMENT WITH THE REVISED TERM; AND FOR OTHER PURPOSES.

WHEREAS, on August 16, 2004 the City Council adopted, and on August 20, 2004 the Mayor approved Ordinance 04-O-1204, which authorized a telecommunications agreement between the City of Atlanta and NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST; and

WHEREAS, the authorizing legislation granted a two-year agreement to NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST; and

WHEREAS, pursuant to Section 138-135 of the Code of Ordinances, all other telecommunications providers have been granted a five-year term; and

WHEREAS, the Telecommunications Act of 1996 requires that local governments not unreasonably discriminate among telecommunications providers; and

WHEREAS, the City and NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST therefore seek to amend the terms of the previously authorized agreement from two (2) years to five (5) years in order to put NextG on the same franchise terms of other telecommunications providers in the City.

THE COUNCIL OF THE CITY OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

SECTION 1: That Sections 2 and 3 of Ordinance 04-O-1204 be deleted in their entirety.

SECTION 2: That the Mayor be and is hereby authorized to execute a franchise agreement with NEXTG NETWORKS OF NEW YORK, INC. d/b/a NEXTG NETWORKS EAST, for use of the public right-of-way and the non-exclusive right of



attachment to approved City streetlights and street poles for telecommunications purposes, for a period of five (5) years from the effective date of the agreement.

SECTION 3: That NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, 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 3: That the City Attorney shall prepare a franchise agreement containing both the original and amended terms, which shall be approved by the City Attorney as to form.

SECTION 4: That all other provisions contained in Ordinance 04-O-1204 not specifically repealed herein shall remain in full force and effect.

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 NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST.

A true copy

Deputy Clerk

ADOPTED by the City Council
APPROVED by the Mayor

NOV 15, 2004
NOV 19, 2004

**AN ORDINANCE
BY CITY UTILITIES COMMITTEE**

04-0-1204

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT WITH NEXTG NETWORKS of NEW YORK, INC., A DELAWARE CORPORATION d/b/a NEXTG NETWORKS EAST, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY INCLUDING APPROVED CITY OWNED STREETLIGHT AND STREET POLES; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT; AND FOR OTHER PURPOSES.

WHEREAS, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, desires to provide telecommunications services on, under over and through the public right-of-way of the City; and

WHEREAS, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, desires to attach equipment to the City owned streetlights and poles located in the public right-of-way; and

WHEREAS, said equipment, to be known as, "NextG Optical Repeater Network" will incorporate both wireless and fiber optic technologies to provide telecommunications services; and

WHEREAS, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, 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 NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, for use of the public right-of-way and the non-exclusive right of attachment to approved City streetlights and street poles for telecommunications purposes.

SECITON 2: That such franchise agreement shall expire and terminate two (2) years from its effective date. -

SECTION 3: NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, 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. Under this Agreement, this cap will be set at eleven million dollars (\$11,000,000.00) annually. 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,



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: In addition to the annual Franchise Fee, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, shall pay the City an annual attachment fee of \$600 per attachment to any City owned streetlight or streetpole that NEXTG is approved to utilize.

SECTION 5: 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 6: That said franchise agreement shall not be binding on the City until executed by the Mayor sealed by the Municipal Clerk and delivered to NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST.

A true copy,

Shonda Daughtr Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

AUG 16, 2004
AUG 20, 2004

04-0-1750

(Do Not Write Above This Line)

AN ORDINANCE BY
CITY UTILITIES COMMITTEE

AN ORDINANCE TO CORRECT THE PROVISIONS OF ORDINANCE 04-0-1204, SO AS TO RESTATE THE TERM OF AN AGREEMENT PREVIOUSLY AUTHORIZED BETWEEN THE CITY OF ATLANTA AND NEXTG NETWORKS OF NEW YORK, INC. D/B/A/ NEXTG NETWORKS EAST FROM TWO YEARS TO FIVE YEARS, TO BE IN CONFORMANCE WITH THE TERMS GRANTED OTHER TELECOMMUNICATIONS PROVIDERS; TO AUTHORIZE THE MAYOR OR HER DESIGNEE TO EXECUTE THE PREVIOUSLY AUTHORIZED AGREEMENT WITH THE REVISED TERM; AND FOR OTHER PURPOSES.

^{1st} ADOPTED BY

NOV 01 2004

COUNCIL

^{Final} ADOPTED BY

NOV 15 2004

COUNCIL

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

Date Referred 10-18-2004

Referred To: City Utilities

Date Referred 11-01-2004

Referred To: City Utilities

Date Referred

Committee Date Chair Referred To

First Reading

City Utilities
Date 10-26-2004
Chair
Action Fav, Adv, Hold (see rev. side) Other
Members

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To Adoption

Committee 10/26/04

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee 11-01-2004

Refer To

Refer To

CERTIFIED

- FINAL COUNCIL ACTION
- 2nd
- 1st & 2nd
- 3rd
- Consent
- V Voice
- RC Voice

CERTIFIED
NOV 15 2004

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
NOV 15 2004

MAYOR'S ACTION

Handwritten signature
MAYOR