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March 30, 2016

**VIA REGULAR U.S. MAIL**

RECEIVED

Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
221 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602-0615

APR -6 2016

Public Service  
Commission

Re: Case No. 2015-0024

Director Derouen:

This letter and associated enclosures are in response to your office's request for follow-up information regarding the telephone franchise negotiations between Cincinnati Bell Telephone Company and the City of Warsaw, Kentucky.

I am happy to report that Warsaw did, in fact, grant Cincinnati Bell a telephone franchise by ordinance. (A copy of Ordinance No. 2015-09 is enclosed as EXHIBIT A.) Ordinance No. 2015-09 incorporated the terms of the bid previously submitted by Cincinnati Bell as the terms of the parties' telephone franchise. (A signed copy of the bid submitted by Cincinnati Bell is enclosed as EXHIBIT B.) And the initial franchise fee paid by Cincinnati Bell was \$100.00 (See EXHIBIT B, Section 12).

If you have any additional questions or concerns, please do not hesitate to contact me directly.

Respectfully yours,

Mark R. Hervey

Enclosures

cc: Hon. Michael A. Duncan  
Ziegler & Schneider, P.S.C.  
541 Buttermilk Pike, Suite 500  
P.O. Box 175710  
Covington, KY 41017

Dressman Benzinger Law, P.S.C. *Counsel for the City of Warsaw, Kentucky*  
Attorneys at Law Via Email

KENTUCKY OFFICES: Thomas More Park • 207 Thomas More Parkway • Crestview Hills, Kentucky 41017-2596 • Phone (859) 341-1881 • Fax (859) 341-1469  
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OHIO OFFICE: Atrium Two • Suite 2500 • 221 East 4th Street • Cincinnati, Ohio 45202-4100 • Phone (513) 241-4110 • Fax (513) 241-4551

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Public Service  
Commission

**ORDINANCE 2015-09**

**AN ORDINANCE OF THE CITY OF WARSAW, IN GALLATIN COUNTY, KENTUCKY, GRANTING A COMPETITIVE NONEXCLUSIVE FRANCHISE TO CINCINNATI BELL EXTENDED TERRITORIES LLC ("CBET"), FOR THE ERECTION, LAYING AND MAINTENANCE OF TELEPHONE FACILITIES AND APPURTENANT FACILITIES AND EQUIPMENT IN, ALONG AND ACROSS THE PUBLIC WAYS, ROADS, STREETS, ALLEYS AND OTHER PUBLIC PLACES IN THE CITY OF WARSAW, KENTUCKY AND FOR FURNISHING AND SELLING TELEPHONE SERVICES AND PRODUCTS BY MEANS OF SAID FACILITIES; AND AUTHORIZING AND DIRECTING THE MAYOR, CITY CLERK AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN APPROPRIATE FRANCHISE AGREEMENT TO CARRY OUT THE TERMS OF THIS ORDINANCE.**

**WHEREAS**, the City of Warsaw ("City") wishes to ensure that telephone service continues to be furnished to its citizens in a reliable, affordable and efficient manner;

**WHEREAS**, the City is has adopted Ordinance 2015-04 which created nonexclusive competitive franchises ("Franchises") to use the City's public rights-of-way, public streets, ways, alleys and other public places in order to facilitate the provision of telephone services;

**WHEREAS**, Ordinance 2015-04 further provided that the Franchises created by the Ordinance shall be bid in accordance with the applicable requirements of the Constitution of the Commonwealth of Kentucky and Chapter 424 of the Kentucky Revised Statutes, as well as any applicable City Ordinances;

**WHEREAS**, the City advertised for telephone bids according to law and CINCINNATI BELL EXTENDED TERRITORIES LLC ("CBET") filed a nonexclusive competitive Franchise with the City for franchise rights to provide telephone service throughout the City;

**WHEREAS**, the City has determined that CBET's service application is reasonable in light of community needs, and that CBET has the ability to effectuate its franchise application;

**WHEREAS**, the City has determined that CBET's competitive telephone application meets the telephone related community needs and interests of the City of Warsaw and its citizens; and



WHEREAS, the public has had adequate notice and opportunity for comment.

NOW, THEREFORE, BE IT ORDAINED as follows:

**SECTION 1:** A nonexclusive competitive telephone Franchise is hereby granted to CBET in order to use the City's public rights-of-way, public streets, ways, alleys and other public places.

**SECTION 2:** The City's Mayor, City Clerk and City Attorney are hereby authorized and directed to work out the terms of the Franchise Agreement with CBET; and the Mayor is authorized to execute it, all according to the framework of CBET's bid as submitted to the City and to such additional terms and provisions that are fair and reasonable to the City, to CBET, and to the patrons of CBET, pursuant to KRS 96.010. The Franchise Agreement shall take effect upon execution and according to the terms of the Agreement.

**SECTION 3:** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 4:** Should any section, clause, line, paragraph, or part of this Ordinance be held unconstitutional or invalid for any reason, the same shall not affect the remainder of this Ordinance or the attached Agreement, as applicable.

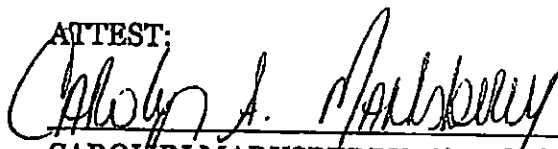
**SECTION 5:** This Ordinance shall become effective from and after its passage and publication.

**SECTION 6:** The foregoing Ordinance was read, passed and adopted by the Council of the City of Warsaw, Kentucky, meeting in regular session on the 10th day of August, 2015, and in regular/special session on the 14 day of Sept, 2015, with 6 yes votes, 0 no votes, and 0 abstentions, and was ordered published in summary according to law.

APPROVED:

By:   
NELSON BROWN, Mayor

ATTEST:

  
CAROLYN MARKSBERRY, City Clerk

PUBLISHED: \_\_\_\_\_

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Public Service  
Commission

**BID PROPOSAL:**

**OPERATION OF TELEPHONE SYSTEMS IN THE  
CITY OF WARSAW, KENTUCKY  
BY  
CINCINNATI BELL TELEPHONE COMPANY, LLC**

EXHIBIT

**B**

tabbles

WHEREAS, the CITY OF WARSAW, KENTUCKY (the "City") has requested bid proposals from parties interested in obtaining a franchise to operate telephone systems within the confines of the City;

NOW, THEREFORE, CINCINNATI BELL TELEPHONE COMPANY, LLC ("CBT" or "Franchisee"), 221 East Fourth Street, Cincinnati, Ohio 45201, hereby submits its bid for obtaining a franchise, privilege and right of way in the streets, alleys and public grounds of the City of Warsaw for the purpose of operating telephone systems as follows:

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### **SECTION 1. DEFINITIONS**

As used herein, the following words and phrases have the meanings indicated:

- A. The words "public property" mean any real estate in the City of Warsaw dedicated or otherwise open to public use, including, without limitation, all streets, roads, highways, sidewalks and other public easements and rights of way.
- B. The word "franchise" means the privilege and right of way in the streets, alleys and public grounds of the City of Warsaw for the use thereof for the purpose described in Addendum A attached hereto and incorporated herein by reference.
- C. The word "facilities" means any tangible apparatus, equipment, fixture, or instrumentality in any way involved in the purpose of the franchise proposed hereby, including without limitation, those described in Addendum B attached hereto and incorporated herein by reference.
- D. The words "franchise service or commodity" mean any service or commodity the transmission, distribution or sale of which is promoted by the franchise proposed hereby.

### **SECTION 2. FRANCHISE NON-EXCLUSIVE**

The franchise proposed hereby shall be non-exclusive; and the City of Warsaw shall not be restricted or precluded thereby from granting additional, like or similar franchises to persons other than the Franchisee, in all or any part of the City of Warsaw.

**SECTION 3. FRANCHISE TERM**

The term of the franchise proposed hereby shall be for a period of twenty (20) years, beginning at midnight on the last day of the calendar month in which this proposal is accepted by the City of Warsaw.

**SECTION 4. FRANCHISE AREA**

The franchise proposed hereby shall be for the entire area of the City of Warsaw, Gallatin County, Kentucky, its successors and assigns, as it now exists or is changed through annexation, reduction or expansion of its boundaries, merger, consolidation, or other similar proceeding.

**SECTION 5. WARSAW AVAILABILITY OF FRANCHISE SERVICE OR COMMODITY**

During the term of the franchise proposed hereby, the Franchisee shall cause the franchise service or commodity to be made available to the citizens, occupants, residents and inhabitants of the of the City of Warsaw, upon the same terms and conditions that the franchise service or commodity is made available by the Franchisee to other persons in similar circumstances. The Franchisee will adhere to Federal, State and Local statutes with regard to availability and provisioning of the franchise service and commodity.

**SECTION 6. CONTINUATION OF EXISTING FACILITIES**

During the term of the franchise proposed hereby, any existing facilities of the Franchisee within or upon any public property of the City of Warsaw, may be continued to be operated, used, maintained and repaired by the Franchisee to the existing condition thereof, as long as the records of the Franchisee in regard thereto are reasonably available to the City of Warsaw upon any need therefore.

**SECTION 7. NEW FACILITIES**

During the term of the franchise proposed hereby, the Franchisee may replace, reconstruct, or extend any existing facilities of the Franchisee within or upon any public property of the City of Warsaw, or construct or install new facilities thereon in accordance with the City of Warsaw ordinances.

**SECTION 8. MAINTENANCE OF FACILITIES**

During the term of the franchise proposed hereby, the Franchisee shall cause the facilities thereof within or upon the public property of the City of Warsaw to be maintained and repaired to a condition which is functional and safe.

**SECTION 9. RESTORATION**

During the term of the franchise proposed hereby, the Franchisee shall cause the condition of any of the public property of the City of Warsaw upon which any facilities of the Franchisee have been installed or constructed to be restored to a condition which is as good or better than the condition thereof immediately preceding the construction or installation of the facilities of the Franchisee thereon.

**SECTION 10. CLAIM DEFENSE AND INDEMNIFICATION**

The Franchise shall, at the sole cost and expense thereof, defend the City of Warsaw against any and all claims and cause of action against the City of Warsaw as a consequence of any act or omission of the Franchisee, pursuant to the franchise proposed hereby, to which there was no contribution or involvement by the City of Warsaw other than the franchise proposed hereby; and the Franchisee shall pay and indemnify and hold the City of Warsaw harmless from any and all claims, damages, judgements, causes of action, court costs and expenses in regard thereto, including without limitation, reasonable fees of attorneys and expert witnesses therefor.

**SECTION 11. OTHER MUNICIPAL AUTHORITY**

The franchise proposed hereby shall not, in any way, restrict or preclude any authority of the City of Warsaw to which the Franchisee may otherwise be subject, according to law.

**SECTION 12. FRANCHISE FEES**

If this franchise is awarded to the Franchisee, its successors or assigns, it will pay the City of Warsaw the sum of One Hundred dollars (\$100.00).

**SUBMITTED BY:**  
CINCINNATI BELL TELEPHONE COMPANY, LLC

BY: *Ted Heckmann*  
**TED HECKMANN**  
CINCINNATI BELL TELEPHONE COMPANY, LLC  
221 E. FOURTH STREET  
CINCINNATI, OH 45202

JULY 13, 2015



ADDENDUM A

The purpose of the franchise to which this Addendum A is attached shall be for construction, maintenance, repair, reconstruction, operation and use of the equipment, apparatus, facilities, and appurtenances thereto for the telephone and general communications system by means of telephone wires, radio signals and otherwise to engage in the business of providing general communications services for use by others.

*Jed Heckmann*  
CINCINNATI BELL TELEPHONE COMPANY, LLC

**ADDENDUM B**

The facilities of the Franchisee shall include, without limitation, poles, crossarms, wires, cables, anchors, conduits, manholes, junction boxes and other apparatus, fixtures, and equipment, both above ground and below ground for the transmission of communications by wire, radio or otherwise.

*Ted Heckmann*

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CINCINNATI BELL TELEPHONE COMPANY, LLC