

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To authorize the Mayor to enter into one or more franchise agreements to allow a telecommunications carrier to attach wireless network antennae to District-owned buildings and poles in return for services to digitally-disadvantaged residents of the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Digital Inclusion Act of 2006”.

Sec. 2. Findings and purposes.

(a) The Council finds that:

(1) Low-income residents and residents in economically disadvantaged areas of the District of Columbia are also likely to be digitally-disadvantaged in that they cannot afford access to the Internet or may lack the computer equipment and training necessary to benefit meaningfully from Internet access.

(2) Certain assets of the District, including light poles and buildings, may provide value to telecommunications carriers for the attachment of wireless network antennae and the deployment of broadband internet services.

(3) The District government does not have the funds to provide to digitally-disadvantaged residents the range of services necessary to afford Internet access and permit them to benefit meaningfully from that Internet access.

(4) By awarding one or more franchises that permit a telecommunications carrier to use District-owned assets such as buildings and poles on a nonexclusive basis in return for the provision of certain services to digitally-disadvantaged residents, the District government can meet the Internet access needs of these residents without additional cost or risk to the District.

(b) The purposes of this act are to:

(1) Obtain value for the District through the awarding of rights to use poles, buildings, and other assets of the District for telecommunications purposes; and

(2) Provide for the furnishing of benefits to digitally-disadvantaged residents of the District in exchange for a franchise to use poles, buildings, and other assets of the District for Internet-related telecommunications purposes.

Sec. 3. Definitions.

For purposes of this act, the term:

- (1) "Backhaul" means the transmission of voice and data traffic from the wireless network to a wireline network infrastructure.
- (2) "Census tracts" means geographical areas defined by median household income according to the most recent census for the District of Columbia published by the United States Bureau of the Census.
- (3) "Connectivity" means connection from a home to a telecommunications provider's network.
- (4) "DC-Net" means the District government's telecommunications service network and information technology infrastructure.
- (5) "Digitally-disadvantaged areas" means census tracts in the District of Columbia with median income below the median income in the District as a whole.
- (6) "Digitally-disadvantaged population" means low-income residents of the District of Columbia.
- (7) "Digitally-disadvantaged residents" means residents of digitally-disadvantaged areas.
- (8) "Digitally-disadvantaged resident household" means all digitally-disadvantaged residents residing at a fixed single-family address in the District of Columbia that define themselves as a family unit.
- (9) "District telecommunications assets" means nonexclusive access to District-owned pole-mounted street light fixtures and buildings and backhaul on DC-Net from selected District locations to carrier hotel at 1275 K Street N.W., Washington, D.C., for Internet-related services.
- (10) "Franchisee" means a person or entity that enters into a franchise agreement pursuant to a successful bid and award.
- (11) "Low-income resident" means any District of Columbia resident whose income meets the eligibility standards for reduced price meals according to the Eligibility Guidelines for Free and Reduced Price Meals for the National School Lunch Program, as established annually pursuant to sections 9(b)(1) and 17(c)(4) of AN ACT To provide assistance to the States in the establishment, maintenance, operation, and expansion of school lunch programs, and for other purposes, approved June 4, 1946 (60 Stat. 233; 42 U.S.C. §§ 1758(b)(1) and 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966, approved October 11, 1966 (80 Stat. 885; 42 U.S.C. §§ 1772 (a)(6) and 1773(e)(1)(A)).
- (12) "OCTO" means Office of the Chief Technology Officer.
- (13) "Package of services for digitally-disadvantaged residents" means some combination of connectivity, computers, software, computer training, support, and Internet service provider services.
- (14) "RFI" means a request for information.
- (15) "RFP" means a request for proposals.

Sec. 4. Franchise agreement.

(a) The Mayor shall, within 30 days of the effective date of this act, issue an RFI to be followed by an RFP pursuant to the requirements of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), for a franchise agreement for the use of District telecommunications assets for telecommunications purposes in exchange for the furnishing of a package of services for digitally-disadvantaged residents. Upon an award, the Mayor shall enter into a franchise agreement with the franchisee.

(b) The franchise agreement shall be a nonexclusive agreement in the District for private use of District telecommunications assets for telecommunications purposes in furtherance of the purposes of this act for Internet-related telecommunications purposes.

(c) The franchise agreement shall be for a period not to exceed 5 years. One year prior to the termination of a franchise agreement, each party shall notify the other, in writing, as to whether it wants to renegotiate the franchise agreement for an additional period of time. Absent satisfactory renegotiation for a renewal period, the Mayor shall, based upon an evaluation of the bids received following the issuance of an RFP, enter into a new franchise agreement for the use of District telecommunications assets in exchange for the furnishing of a package of services for digitally-disadvantaged residents. The terms of a new franchise agreement shall not be inconsistent with the provisions of this act.

(d) Under the terms of a franchise agreement, the franchisee shall be responsible for:

(1) Offering to each digitally-disadvantaged household specified in the franchise agreement the complete package of services for digitally-disadvantaged residents at no cost to the household;

(2) Providing to each digitally-disadvantaged resident household that accepts the offer the complete package of services for digitally-disadvantaged residents at no cost to the household;

(3) Providing the package of services for digitally-disadvantaged residents according to a time schedule established in the franchise agreement;

(4) Reporting to the Mayor, no less often than quarterly the number of:

(A) The number of digitally-disadvantaged households to which the franchisee has offered the package of services for digitally-disadvantaged residents;

(B) The number of digitally-disadvantaged resident households that have accepted the franchisee's offer of that package of services for digitally-disadvantaged residents, and

(C) The number of digitally-disadvantaged resident households to which the franchisee has provided the package of services for digitally-disadvantaged residents by the dates specified in the schedule established in the franchise agreement;

(5) Maintaining records, which shall be available to the Mayor on request, sufficient to identify:

- (A) All digitally-disadvantaged resident households to which the franchise has offered the package of services for digitally-disadvantaged residents;
 - (B) All digitally-disadvantaged resident households that have accepted the franchisee's offer of the package of services for digitally-disadvantaged residents;
 - (C)(i) All digitally-disadvantaged resident households to which the franchisee has provided the package of services for digitally-disadvantaged residents; and
 - (ii) The date on which each digitally-disadvantaged resident household received that package of services for digitally-disadvantaged residents;
 - (D)(i) All complaints received by the franchisee in connection with offering and providing the package of services for digitally-disadvantaged residents; and
 - (ii) The manner and date of resolution of each complaint;
 - (6) All costs and expenses of the activities described in paragraphs (1) through (4) of this subsection; and
 - (7) All costs and expenses incident to the franchisee's use of District telecommunications assets as defined in this act.
- (e) The franchise agreement shall establish:
- (1) The specific population of digitally-disadvantaged residents (by income level, residence in digitally-disadvantaged areas, or both) to which the franchisee agrees to offer the package of services for digitally-disadvantaged residents to each digitally-disadvantaged resident household;
 - (2) The schedule according to which the franchisee will provide the package of services for digitally-disadvantaged residents to the digitally-disadvantaged resident households to be served pursuant to the franchise agreement;
 - (3) Procedures for periodically upgrading hardware provided as part of any package of services to digitally-disadvantaged resident households during the course of the franchise agreement;
 - (4) That the franchisee shall be subject to fees, payable to the Treasurer of the District of Columbia, for failure to adhere to the schedule described in subsection (d)(3) of this section and paragraph (2) of this subsection;
 - (5) That prior to signing the franchise agreement, the Mayor and the franchisee shall define the franchisee's specific use of District telecommunications assets; and
 - (6)(i) That upon the expiration of the franchise agreement, or upon the expiration of a renewal term, all computers, peripherals, and other items furnished by the franchisee to any household pursuant to the franchise agreement shall remain the property of the household; and
 - (ii) That no person who received any item or service that is part of the package of services for digitally-disadvantaged residents shall be liable for any fee or charge for such item or service.
- (f) The Mayor shall include in the franchise agreement the requirements of this act and any other provisions that the Mayor considers appropriate to carry out the purposes of this act.
- (g) Pursuant to the requirements of section 451 of the District of Columbia Home Rule

Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.51), the franchise agreement shall be subject to approval by the Council.

Sec. 5. Insurance and bonds; liability.

(a) The franchisee shall assume all legal responsibility for, and shall hold the District harmless from, any costs or liability that arise because of injury to persons or property caused by, or in relation, to the provision of the package of services for digitally-disadvantaged residents or the franchisee's use of District telecommunications assets pursuant to this act and the franchise agreement.

(b) The Mayor shall require the franchisee to obtain liability insurance sufficient to insure against all liability or costs that arise because of injury to persons or property caused by, or in relation to, the provision of the package of services for digitally-disadvantaged residents and the franchisee's use of District telecommunications assets pursuant to this act and the franchise agreement.

(c) The Mayor shall require the franchisee to obtain a performance bond sufficient to guarantee the provision of the package of services for digitally-disadvantaged residents pursuant to this act and the franchise agreement.

(d) No person aggrieved or damaged in any way by any act or omission of the franchisee related to the offering or provision of the package of services for digitally-disadvantaged residents or the franchisee's use of District telecommunications assets pursuant to this act and the franchise agreement shall have a cause of action against the District.

Sec. 6. Selection of the franchisee.

(a) In evaluating and awarding the franchise agreement, the Mayor shall give priority to entities that have the technical and financial ability to successfully provide the package of services for digitally-disadvantaged residents included in each proposal and provide written evidence that they meet the following criteria in the following order of priority:

(1) A proposal to provide a package of services for the largest number of digitally-disadvantaged residents, by income level, or residence in digitally-disadvantaged areas, or both;

(2) A proposal to provide a package of services to digitally-disadvantaged residents according to the fastest schedule;

(3) A proposal that includes provisions to periodically upgrade hardware provided as part of any package of services to digitally-disadvantaged residents;

(4) Such other factors as the Mayor may identify in the best interests of the District to further the purposes of this act.

Sec. 7. Termination of the franchise agreement.

(a) The Mayor shall notify the franchisee in writing of any violations of the franchise agreement and shall establish a compliance schedule for correcting the violations. If the

compliance schedule is not met, the Mayor may terminate the franchise agreement after 60 days' written notice to the franchisee of the intent to terminate the franchise agreement, setting forth the reasons for the termination.

(b) In the event of bankruptcy of the franchisee, the Mayor shall terminate the franchise agreement and provide the franchisee written notice of this action.

(c) In addition to the grounds for termination of the franchise agreement under subsections (a) and (b) of this section, the Mayor may include in the franchise agreement any other terms and conditions that shall constitute the basis for cancellation that are in the best interests of the District.

Sec. 8. Franchisee selection procedures.

Notwithstanding provisions of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301 *et seq.*), to the contrary, except the protest and dispute provisions over which the Contract Appeals Board shall maintain jurisdiction, the Mayor shall implement the following franchise selection procedure in awarding one or more franchises pursuant to this act:

- (1) Request for information;
- (2) Evaluation of the RFI received and preparation of the RFP;
- (3) Issuance of the RFP and evaluation of proposals received;
- (4) Submission of an executive summary, including findings and determination

that selection of one or more franchisees will provide the greatest benefit to the largest population of digitally-disadvantaged residents of the District of Columbia, including a rationale for limiting the franchise award to one entity or extending franchises to more than one entity, to the Council by the Mayor;

- (5) Council review and approval of the proposed franchise agreement; and
- (6) Execution of franchise agreement.

Sec. 9. Delegation of authority.

The Mayor may delegate the powers established by this act to OCTO. In exercising this authority, OCTO may consult with such other agencies as it considers appropriate in the best interests of the District.

Sec. 10. Human Rights Act compliance.

Each franchise agreement shall comply with the District of Columbia Human Rights Act, effective Dec. 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.67).

Sec. 11. Not a franchise agreement.

This act shall not constitute, or be construed to comprise, a franchise agreement.

Sec. 12. Severability.

If a provision of this act or its application to a particular person or circumstance is held invalid, such invalidity does not affect other persons or applications.

Sec. 13. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 14. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia