

ORDINANCE NO. 2016-10-107

AN ORDINANCE DESIGNATING UC2B NFP-RECOMMENDED  
PURCHASER FOR UC2B NETWORK ASSETS

(Purchase of UC2B Network assets from iTV-3, LLC,  
an affiliate of Countrywide Broadband, LLC)

WHEREAS, the City of Urbana ("Urbana") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power, whether legislative or administrative, and perform any function pertaining to its government and affairs not otherwise expressly reserved to the State of Illinois by legislation; and

WHEREAS, in August 2009, the University of Illinois ("University") submitted a proposal to the U.S. Department of Commerce seeking financial assistance in order to create and construct a high speed fiber optic network within the City of Urbana and the City of Champaign ("Champaign") to be known as the Urbana-Champaign Big Broadband project ("UC2B Network"); and

WHEREAS, in September 2009, Urbana, Champaign and the University entered into and executed an Intergovernmental Agreement ("IGA") which provided for the organization of the Urbana-Champaign Big Broadband Consortium ("Consortium") in order to create and construct the UC2B Network should the federal government approve the University's request for financial assistance to create and construct the UC2B Network; and

WHEREAS, in February 2010, the U.S. Department of Commerce awarded the University a grant of up to \$22,534,776 for the creation and construction of the UC2B Network; and

WHEREAS, in November 2010, the Illinois Department of Commerce and Economic Opportunity awarded the University a \$3,500,000 grant to construct the UC2B Network; and

WHEREAS, Urbana and Champaign provided local funding and/or in-kind value for the construction of the UC2B Network; and

WHEREAS, the Consortium commenced, undertook, and completed creation and construction of the UC2B Network in accordance with the terms and conditions of the U.S. Department of Commerce and the State of Illinois grants which included constructing fiber optic rings throughout the Champaign Urbana community and laying

optical fiber and offering fiber to the home in 11 census tracts; and

WHEREAS, the Consortium members began operating the UC2B Network but ultimately decided to form a not-for-profit corporation to take over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, on August 16, 2013, the Urbana Champaign Big Broadband NFP (the "NFP") was incorporated; and

WHEREAS, the U.S. Department of Commerce was given a 77% lien interest in those physical assets of the UC2B Network which were acquired and installed using the federal grant funds; and

WHEREAS, on or about September 20, 2013, the U.S. Department of Commerce (the National Telecommunications and Information Administration) approved the University's request to assign and transfer the operation, maintenance and expansion of and to grant indefeasible rights of use in and to the UC2B Network to the NFP; and

WHEREAS, sometime after September 20, 2013, the Consortium members transferred and assigned their rights to operate, maintain and expand and to grant indefeasible rights of use in and to the UC2B Network to the NFP while retaining any and all ownership rights in and to the physical assets which comprise the UC2B Network as of the immediate aforesaid date; and

WHEREAS, sometime prior to February 28, 2014, the NFP decided to seek a partner which would have the financial and staff resources and ability to operate, maintain and expand the UC2B Network with the goal of expanding the same throughout Urbana and Champaign; and

WHEREAS, on or about February 28, 2014, the NFP and iTV-3, Inc. ("iTV-3") entered into an agreement ("NFP Agreement") which, *inter alia*, transferred the NFP's right to operate, maintain and expand and grant indefeasible rights of use in and to the UC2B Network to iTV-3; and

WHEREAS, Paragraph 8 of the NFP Agreement states:

iTV-3 further agrees that, in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana

(hereinafter called "the Cities") will have right of first refusal to purchase iTV-3's interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.

(The "right of first refusal" granted to Urbana and Champaign in Paragraph 8, hereinafter referred to as "RFR"); and

WHEREAS, iTV-3 took over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, pursuant to Resolution No. 2014-12-068R, Urbana approved a Cable Television Franchise Agreement ("Cable Agreement") dated December 15, 2014, whereby iTV-3 was granted the right to provide cable television service to those Urbana residents and businesses which subscribed to the service which iTV-3 would make available; and

WHEREAS, iTV-3, pursuant to the Cable Agreement, commenced providing cable service over the UC2B Network; and

WHEREAS, on or around February 12, 2016, iTV-3 notified the NFP and the NFP notified Urbana and Champaign that iTV-3 and Countrywide Broadband, LLC ("CWB") had entered into and executed an Asset Purchase Agreement ("APA") whereby iTV-3 agreed to sell and CWB or an affiliate created by CWB (iTV-3, LLC)(CWB and iTV-3, LLC, collectively, "CWB") agreed to purchase all of iTV-3's assets wherever located including, but not necessarily limited to, those located in Urbana and Champaign; and

WHEREAS, Urbana received a notice from iTV-3 and CWB of CWB's intent to acquire iTV-3's cable franchise with Urbana which notice was included in a Federal Communications Commission Form 394 ("FCC 394"); and

WHEREAS, in a letter dated July 25, 2016, CWB notified Urbana CWB's withdrawal of its applications (FCC 394s) to acquire the above-referenced cable franchises since CWB had obtained a statewide cable license from the State of Illinois; and

WHEREAS, on August 18, 2016, the NFP and CWB entered into an agreement which set forth the terms and conditions pursuant to which CWB would take over operation, maintenance and expansion of the UC2B Network from iTV-3 (the "NFP-CWB Agreement"); and

WHEREAS, Section 6.1 of the NFP-CWB Agreement, in relevant part, provides:

The Cities, jointly or separately, shall have a right to buy or designate a buyer for the Expanded Network in its entirety, including customer relationships and Associated Property for \$8,200,000 provided that the Cities must exercise this right no later than 5:00 p.m. CST on October 29, 2016, and the Cities or their designee must consummate such purchase no later than 5:00 p.m. CST on December 31, 2016, or such option shall be deemed waived.

and;

WHEREAS, on August 22, 2016, the NFP issued a request for proposal ("RFP") to gauge the level of interest within the broader internet provider industry for partnering with the NFP on terms and conditions more favorable than those contained in the NFP-CWB Agreement; and

WHEREAS, the NFP received a number of responses to its RFP all of which expressed strong interest in partnering with the NFP to operate, maintain and expand the UC2B Network; and

WHEREAS, the NFP has identified \_\_\_\_\_, (hereinafter, "RFP Respondent") as an entity capable of carrying out an agreement to operate, maintain and expand the UC2B Network on terms and conditions with the NFP has determined to be in the best interests of the Urbana-Champaign community; and

WHEREAS, the NFP and RFP Respondent have entered into an agreement providing for the use of UC2B Network assets and the expansion of the fiber system within the cities of Urbana and Champaign; and

WHEREAS, the NFP has requested Urbana and Champaign to jointly appoint RFP Respondent as their designee for purposes of exercising the right to purchase the UC2B Network from CWB pursuant to Section 6.1 of the NFP-CWB Agreement; and

WHEREAS, the City Council deems it in the public interest of the City of Urbana to so designate RFP Respondent as the City of Urbana's designee for purposes of purchasing the UC2B Network assets and other improvements from CWB pursuant to an agreement entered into with the NFP.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AND FOR THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, as follows:

Section 1.

The City Council shall and does hereby designate \_\_\_\_\_ as the City of Urbana's designee pursuant to Section 6.1 of the NFP-CWB Agreement to be the buyer in accordance with the terms and conditions of agreement as entered into by and between the NFP and CWB.

Section 2.

The Mayor shall have the right and authority to enter into and execute any agreement or other document necessary in order to facilitate \_\_\_\_\_'s purchase of any and all such rights and interest in the UC2B Network, as expanded by CWB, which CWB has.

Section 3.

In the event that, as of the date this Ordinance is adopted, the identity of the RFP Respondent cannot be publicly disclosed; upon the affirmative recommendation of the NFP to the City Attorney, the Mayor shall be and hereby is authorized to write-in the name of the said RFP Respondent and the inclusion of such name shall not be deemed, construed or interpreted as in any way invalidating this Ordinance.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this \_\_\_\_ Day of \_\_\_\_\_, 2016 with the "ayes" and "nays" being recorded as follows:

AYES: \_\_\_\_\_.

NAYS: \_\_\_\_\_.

ABSTENTIONS: \_\_\_\_\_.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk.

APPROVED by the Mayor this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2015.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor.