

ORDINANCE NO. 011-111

AN ORDINANCE AUTHORIZING A USER
AGREEMENT WITH NORTHERN ILLINOIS
UNIVERSITY PERMITTING USE OF
CERTAIN FIBER OPTIC FACILITIES
INSTALLED IN THE CHICAGO TRANSIT
AUTHORITY'S BLUE LINE RIGHT OF WAY

WHEREAS, Chicago Transit Board Ordinance No. 99-113, dated August 9, 1999, authorized a contract ("Original Contract") between the Transit Authority and MFS Network Technologies, Inc., now known as Zayo Group (f/k/a Adesta Communications Inc.) ("Zayo"), to install and market, for use by third parties under user agreements to be entered into with the Authority, certain fiber optic communications and cables and associated terminations ("Fiber Optic Facilities") in the Authority's Blue Line right-of-way from O'Hare Airport to Jackson and Dearborn in Chicago, Illinois ("Blue Line ROW"); and

WHEREAS, Chicago Transit Board Ordinance No. 000-117, dated October 4, 2000, authorized an Amendment to the Original Contract permitting Zayo to install additional user ducts so that the Fiber Optic Facilities included a total of twelve user ducts in the Blue Line ROW (that Amendment to Contract and the Original Contract, collectively, the "Contract"); and

WHEREAS, the total costs expended by Zayo for installation of the Authority's Fiber Optic Facilities in the Blue Line ROW was Twelve Million Three Hundred Thousand Dollars (\$12,300,000) ("Construction Cost"); and

WHEREAS, the Contract provides that Zayo will provide routine and emergency maintenance services for the Authority's Fiber Optic Facilities for twenty-three (23) years from the inception of the Contract on February 8, 2000; and

WHEREAS, The Contract also provides that Zayo will market the Authority's Fiber Optic Facilities to prospective third-party users and advise interested third parties that they will be required to enter into a user agreement with the Authority for use of the Fiber Optic Facilities; and

WHEREAS, The Contract further provides that the revenue generated from these user agreements is to be applied initially to reimburse Zayo for its Construction Cost, and that after Zayo has thereby recovered the entire Construction Cost, the revenues from user agreements are to be divided between the Authority and Zayo, with the Authority to receive seventy-five percent (75%) and Zayo to receive twenty-five percent (25%); and

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WHEREAS, To date, Zayo's marketing of the Fiber Optic Facilities in the Blue Line ROW has produced three User Agreements and additional fibers remain available for use; and

WHEREAS, Zayo has recently marketed the Fiber Optic Facilities to Northern Illinois University (NIU), and, as a result, NIU plans to use two (2) dark fibers of the Authority's Fiber Optic Facilities until February 8, 2023 for a user fee of Fifty-nine Thousand Twenty Dollars and thirty-five cents (\$59,020.35); and

WHEREAS, the user agreement with NIU requires that it indemnify the Authority and can be terminated upon a default by either party; and

WHEREAS, NIU will also be required to enter into a separate fiber maintenance agreement with Zayo; and

WHEREAS, The Authority will retain fee title to the Fiber Optic Facilities installed in the Blue Line ROW; now, therefore:

BE IT ORDAINED BY THE CHICAGO TRANSIT BOARD
OF THE CHICAGO TRANSIT AUTHORITY:

SECTION 1. The Chairman of the Chicago Transit Board, the President, or the SVP Chief Administrative Officer, Chief Technology Officer, or their designee, is hereby authorized to execute an Agreement for the Right of Use of Fiber with Northern Illinois University for the use of two (2) dark fibers of the Authority's Fiber Optic Facilities installed in the Blue Line Right of Way.

SECTION 2. The Agreement will continue from execution until February 8, 2023, require that Northern Illinois University indemnify the Authority and pay a user fee of fifty-nine thousand twenty dollars and thirty-five cents (\$59,020.35), permit termination upon default by either party and include such other terms as are set forth in the Agreement attached hereto as Exhibit A.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

APPROVED:

PASSED:

Chairman

Assistant Secretary

October 13, 2011

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