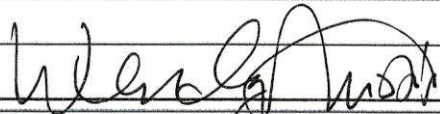


JAN 13 2026



CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM

Council Meeting Date: January 13, 2026

DEPARTMENT: Legal	BY: Barbara Hodgson	DATE: 01/06/2026
SUBJECT: Consider Approval of Ordinance 2026-07, an Ordinance granting the right, privilege and franchise to Windstream Communications Southwest, grantee, and its successors and assigns, to construct, erect, build, equip, own, maintain and operate in, along, under, over and across the Streets, Avenues, Alleys, Bridges, Viaducts and Public grounds of the City of Carlsbad. Such posts, poles, wires, cables, conduits and other appliances, structures and fixtures necessary or convenient for rendition of telephone and other communication services and for conducting service and for conducting general local and long-distance telephone business; providing for consideration; for period of grant; for assignment; for method of acceptance; for repeal of conflicting Ordinances and for partial invalidity, and repealing Ordinance No 837 A. Public Hearing B. Consider Approval of Ordinance 2026-07		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) This Franchise Agreement would allow Windstream to construct, erect, build, equip, own, maintain and operate such posts, poles, wires, cables, conduits and other appliances, structures and fixtures necessary or convenient for rendering telephone and other communication services and for conducting a general local/extended area and long distance telephone in the City of Carlsbad. The location and construction of these structures and fixtures will be subject to regulation and control by the City; streets are to be restored to good condition; clearance of wires above ground will conform to applicable national standards and City Code; Windstream will be responsible for tree trimming under the direction and supervision of the City. Windstream will pay the City, on a quarterly basis, 4% of the quarterly gross receipts derived by Windstream from exchange access rates charged to customers within the City; and Windstream will furnish wire space for use by the City police and fire alarm system. The agreement will be in force for a period of ten (10) years beginning on the effective date.		
DEPARTMENT RECOMMENDATION: The Legal Department has reviewed and approved the Franchise Agreement with Windstream.		
BOARD/COMMISSION/COMMITTEE ACTION: -		
Reviewed by:		
City Manager: 	Date: 1-8-2026	

Attachments:

1. Franchise Agr - Windstream-Kinetic-Unity (002) (002)

ORDINANCE NO. 2026- 07

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO WINDSTREAM COMMUNICATIONS SOUTHWEST, GRANTEE, AND ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, ERECT, BUILD, EQUIP, OWN, MAINTAIN AND OPERATE IN, ALONG, UNDER, OVER AND ACROSS THE STREETS, AVENUES, ALLEYS, BRIDGES, VIADUCTS AND PUBLIC GROUNDS OF THE CITY OF CARLSBAD, NEW MEXICO, SUCH POSTS, POLES, WIRES, CABLES, CONDUITS AND OTHER APPLIANCES, STRUCTURES AND FIXTURES NECESSARY OR CONVENIENT FOR RENDITION OF TELEPHONE AND OTHER COMMUNICATION SERVICE AND FOR CONDUCTING SERVICE AND FOR CONDUCTING A GENERAL LOCAL AND LONG-DISTANCE TELEPHONE BUSINESS; PROVIDING FOR CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY, AND REPEALING ORDINANCE NO. 837.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARLSBAD, NEW MEXICO:

SECTION 1. GRANT OF RIGHT. PRIVILEGE AND FRANCHISE FOR CONSTRUCTION AND MAINTENANCE OF TELEPHONE PLANT AND SERVICE

That the right, privilege and franchise be, and the same is hereby, granted to Windstream Communications Southwest, hereinafter referred to as the "Telephone Company," and its successors or assigns, subject to the terms and conditions hereinafter set forth, to construct, erect, build, equip, own, maintain and operate in, along, under, over and across the streets, alleys, avenues, bridges, viaducts and public grounds of Carlsbad, New Mexico, such posts, poles, wires, cables, conduits and other appliances, structures and fixtures necessary or convenient for rendering telephone and other communication services and for conducting a general local/extended area and long distance telephone

SECTION 2. SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUIT

That all poles to be placed shall be of sound material and reasonably straight, and shall be so set that they will not interfere with the flow of water to any gutter or drain, and so that the same will interfere as little as practicable with the ordinary travel on the street or sidewalk. The location and "route of all poles, stubs, guys, anchors, conduits and cables to be placed and constructed by the Telephone Company in the construction and maintenance of its telephone system in the City, and the location of all conduits to be laid by the Telephone Company within the limits of the City under this ordinance, shall be subject to the reasonable and proper regulation, control and direction of the City Council or any city official to whom such duties have been or maybe

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delegated. That nothing in this Ordinance is intended to add to or detract from any authority granted by the Legislature of the State of New Mexico to the City.

SECTION 3. STREETS TO BE RESTORED TO GOOD CONDITION

That the surface of any street, alley, highway or public place within the City disturbed by the Telephone Company in building, constructing, renewing or maintaining its telephone plant and system shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work and maintained to the satisfaction of the City Council, or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway, or public place shall be encumbered for a longer period than shall be necessary to execute the work. Telephone Company will relocate its facilities within a specific amount of time allotted by City if the City deems it is necessary.

SECTION 4. TEMPORARY REMOVAL OF WIRES

That the Telephone Company on the request of any person shall remove or raise or lower its wires within the City temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the Telephone Company may require such payment in advance. The Telephone Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes. The clearance of wires above ground or rails within the City and also underground work shall conform to the basic standards of the National Electrical Safety Code, National Bureau of Standards, and United States Department of Commerce, as promulgated at the time of erection thereof.

SECTION 5. TREE TRIMMING

That the right, license, privilege and permission is hereby granted to the Telephone Company, its successors and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks and public places of the City, so as to prevent the branches of such trees from coming in contact with the wires or cables of the Telephone Company, and when so ordered by the City, said trimming shall be done under the supervision and direction of the City Council or any City official to whom said duties have been or may be delegated.

SECTION 6. ANNUAL CASH CONSIDERATION TO BE PAID BY THE TELEPHONE COMPANY

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That to indemnify the City for any and all possible damages to its streets, alleys, and public grounds which may result from the placing therein of the Telephone Company's poles or other equipment or apparatus, and to compensate the City for its superintendence of this agreement, and as the cash consideration for the same, the Telephone Company agrees to pay to the City quarterly during the continuance of this agreement a sum of money equal to four percent (4%) of the quarterly gross receipts derived by the Telephone Company from exchange access rates, contained in Section 6 of its approved New Mexico General Exchange Tariff, charged customers within the corporate limits of the City during the preceding quarter. The first payment shall be made on or before the last day of the month following the close of the first calendar quarter of 2025 and thereafter quarterly on or before the last day of the month following the close of each subsequent calendar quarter.

SECTION 7. PAYMENT OF CASH CONSIDERATION TO BE IN LIEU OF ANY OTHER PAYMENTS EXCEPT USUAL GENERAL OR SPECIAL AD VALOREM TAXES

That the City agrees that the consideration set forth in the preceding section hereof shall be paid and received in lieu of any tax, license, charge, fee, street or alley rental or any other character of charge for use and occupancy of the streets, alleys, and public places of the City; in lieu of any pole tax or inspection fee tax; in lieu of any easement or franchise tax, whether levied as an ad valorem, special or other character of tax; and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied. Should the City not have the legal power to agree that the payment of the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals, and easement or franchise taxes aforesaid, then the City agrees that it will apply so much of said payment as may be necessary to the satisfaction of the Telephone Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, and easement or franchise taxes.

SECTION 8. NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE

That nothing herein contained shall be construed as giving to the Telephone Company any exclusive privileges.

SECTION 9. SUCCESSORS AND ASSIGNS

That the rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns. This franchise shall not be assigned without the written consent of city, but such consent may be withheld only for good cause.

SECTION 10. PERIOD OF FRANCHISE

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That this agreement shall be in full force and effect for the period beginning with the effective date hereof and ending Ten (10) years after such date.

SECTION 11. PARTIAL INVALIDITY AND REPEAL PROVISIONS

That if any section, sentence, clause, or phrase of this Ordinance is for any reason held to be illegal, ultra vires or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this Ordinance. Ordinance No. 1003 together with any other ordinances and/or agreements and parts of ordinances and/or agreements in conflict herewith are hereby repealed.

SECTION 12. FACILITIES TO BE FURNISHED CITY AS ADDITIONAL CONSIDERATION

That in addition to the consideration set forth in Section 6, the Telephone Company shall hold itself ready to furnish, subject to the use of the City, such wire space as may be required from time to time by the City upon the poles now owned or hereafter erected by the Telephone Company in the City for the use of the City's police and fire alarm system; provided that the required wire space shall not exceed four wires on any one pole. The location on the poles of this fire and police wire space shall be determined on specific applications for space, at the time the applications are received from the City, and will be allotted in accordance with the considerations for electrical construction of the United States Department of Commerce, Bureau of Standards. In its wire construction on the Telephone Company's poles, the City will follow the suggestions and requirements laid down for wire construction in the Rules and Regulations of the Bureau of Standards of the United States Department of Commerce. All such wires shall be constructed, maintained and operated in such manner as not to interfere with, nor create undue hazard in, the operation of the telephone system of the Telephone Company. The Telephone Company shall not be responsible to the City for any claims, demands, losses, suits, judgments for damages or injuries to persons or property by reason of the construction, maintenance, inspection or use of the police and fire alarm wires belonging to the City.

SECTION 13. ATTACHMENTS ON POLES NOT HERE AFFECTED

That nothing in this Ordinance contained shall be construed to require or permit any electric light or power wire attachments by the City or for the City. Nothing herein contained shall obligate or restrict the Telephone Company in exercising its right voluntarily to enter into pole attachment, pole usage, joint ownership, and other wire space and facilities agreements with the light and power companies and with other wire using companies which may be privileged to operate within the City.

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SECTION 14. RATE INCREASES AND DECREASES

The Telephone Company and the City recognize that under the existing Constitution and laws of the State of New Mexico, the exclusive jurisdictions to fix, determine, supervise, regulate and control all rates and charges for the telephone company is vested in the State Corporation Commission. However, it is agreed the Telephone Company shall at all times during the term of this Ordinance keep and maintain all contracts, books of accounts, and other records and documents which reflect or bear upon the rates and charges of the Telephone Company and which shall be made available and/or open to inspection by any authorized agent of the City at all reasonable times.

SECTION 15. RESERVATION BY CITY OF RIGHTS IN STREETS

The City reserves the right to lay and permit to be laid, gas, water, sewer and other pipe lines or cables and to do or permit to be done, any underground work that may be deemed necessary or proper by the governing body of the City of Carlsbad in, across, along or under any street, alley, highway or other public place or way occupied by the Telephone Company, and to change any curb, sidewalk or street or the grade or line of same. Upon notice by the City to the Telephone Company of any proposed construction or reconstruction of water, sewer, or other pipelines or cables owned by it, a change of curb, sidewalks or streets, or the grade or line of same, the Telephone Company shall within a specific amount of time allotted by the city remove and change its facilities without cost to the City to conform to the proposed changes or construction. In permitting such work to be done, the City shall not be liable to the Telephone Company for any damages occasioned by the neglect of any person not the agent or employee of City.

SECTION 16. INDEMNITY

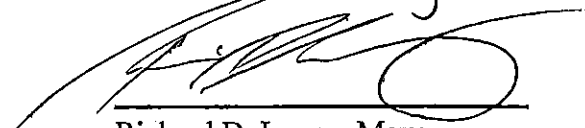
The Telephone Company shall indemnify and save harmless the municipality, it's governing body officers, agents and employees from and against the pro rata share of all claims, obligations, judgments, costs and expenses attributable to the negligence of the Telephone Company, its officers, agents or employees, contractors or subcontractors in connection with the installation, repair, operation, maintenance, or existence of any of the Telephone Company's facilities or in any work done by the Telephone Company as authorized by this Franchise during the full period thereof.

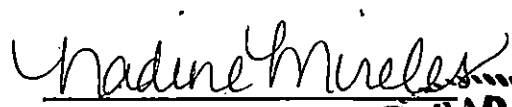
SECTION 17. EFFECTIVE DATE OF ORDINANCE

That the Telephone Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Clerk, and upon such acceptance being filed, this Ordinance shall take effect and be in force as of the date of filing of acceptance or the publication of this Ordinance required by law, whichever be later.

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Introduced, Passed, Approved and Adopted this 13th day of January A.O. 2026.


Richard D. Lopez, Mayor


Nadine Mireles, City Clerk



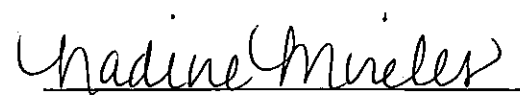
Valor Telecommunications of Texas, LLC DBA Windstream
Communications Southwest.

By: Sarah Hays
Sarah Hays
Staff Manager – Engineering Support

STATE OF NEW MEXICO))SS.
COUNTY OF EDDY)

I, Nadine Mireles City Clerk of the City of Carlsbad, New Mexico, do hereby certify that the above and foregoing is a true and correct copy of the franchise granted by the City of Carlsbad, New Mexico to Windstream Communications, LLC as indicated herein. The same is now recorded in Volume Page, of the Ordinance Records of Carlsbad, New Mexico. WITNESS MY HAND this the 13th day of Jan, A.O. 2026.




Nadine Mireles, City Clerk

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